Nos. 23-35595 & 24-1602

IN THE 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,
and

JOSE TREVINO, ISMAEL G. CAMPOS, and State Representative ALEX YBARRA,
Intervenor-Defendants-Appellants

On Appeal from the United States District
Court for the Western District of Washington
No. 3:22-cv-05036
Hon. Robert S. Lasnik

PLAINTIFFS-APPELLEES' SUPPLEMENTAL EXCERPTS OF RECORD INDEX VOLUME

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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SUSAN SOTO PALMER, et al., Plaintiffs, v. STEVEN HOBBS, et al., Defendants.	C22-5035-RSL
	SEATTLE, WASHINGTON
	March 8, 2024 - 1:30 p.m.
JOSEPH TREVINO, et al., Intervenor-Defendants.	EVIDENTIARY HEARING

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

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Proceedings stenographically reported and transcript produced with computer-aided technology

redistricting plans before?

A Yes, I have.

Q Tell us about that.

A So, recently, I submitted illustrative maps in a case for Dodge City in the state of Kansas, and prior to that, not involving a court case, I and actually Dr. Collingwood collaborated on drawing school board or redistricting school board maps in the state of New Mexico for the Roswell Independent School District.

Q Have any of the districts you have drawn ever been struck down by a court or otherwise rejected?

A No.

Q Now, if I recall correctly in your CV, you had also mentioned an engagement with the Attorney General's Office of Maryland related to the redistricting in that state. Did your work in that case involve or in that matter involve any drawing of any maps or evaluating or participating in the drawing of any maps?

A No, I did not participate in drawing any of those lines. My engagement was related to conducting racially polarized voting analysis in regions of Maryland.

Q And a final question on your qualifications and your experience: Have you ever been retained as an expert to evaluate redistricting plans for compliance with traditional redistricting criteria?

A Yes. One example would be the state of Florida, where I

evaluated proposed congressional maps, and then, eventually, the enacted or adopted Florida congressional maps.

Q Let's turn now to this case. Can you please tell us what you were retained to do here?

A Yes. I was asked to rely on Washington's redistricting criteria and traditional redistricting principles to craft a Legislative District 14 that unites population centers from East Yakima to Pasco, along the Yakima Valley, which form a community interest, as identified by the court. And I was very specific as to not rely on any racial and ethnic data or otherwise view it or reference it, and the same goes for any political, electoral, or partisan analytics data.

Q And before we delve into any one specific map, would you mind explaining your general approach? How did you sit down to start, when you started this task?

A So in a case of remedial scenario, the way it works, I started with an Enacted Map for Washington State, and I attempted to introduce only changes that were necessary to craft the Legislative District 14, remedial Legislative District 14.

Q You mentioned a couple of things you did not consider. One of them was political data and election data. How did you shield yourself from that data while drawing maps?

A So I relied on Dave's Redistricting Application for drawing these remedial proposals, and it's very simple, actually, when it comes to political or partisan analytics. Before you start

drawing the lines, there's a "Settings" tab, where you can click out or remove any political or partisan data, and that's what I did.

Q The same question for racial demographic data. How do you shield your eyes from that?

A Yeah. You can take out racial and ethnic demographic data breakdowns by county, cities, VTDs, or blocks by removing, essentially, two tabs on each side of the application.

Q I would like to turn to page 17 of your January 5th report, which was filed at Docket No. 245-1. And, for the record, that's ECF Page No. 18. And I will wait for us to get there.

MR. MULJI: Docket No. 245-1. Apologies, Your Honor, technical difficulties. And I gave away my binder, but actually -- thank you.

And my apologies. That's actually Docket No. 277 that I'm asking about, at page 17. Oh. No, I'm sorry. I was correct. 254-1. I'm getting my numbers all mixed up.

It's up. Wonderful.

Q For clarity of the record, I'm pulling up page 17 of 254-1, a filed document, and that's your March or your -- I'm sorry, your January 5th report. Do you see that on your screen now?

A Yeah, I see a report. Yes.

Q Okay. And do you see a couple of maps there on your screen?

A Yes. I see one at least.

Q I'm going to actually just use the ELMO here.

A Okay.

MR. HOLT: Do you need a copy of the report to use?

MR. MULJI: I do have a copy here.

MR. HOLT: Okay.

THE COURT: Okay. There we go.

MR. MULJI: 254-1 at page 18, ECF number, ECF page 18. There we go.

THE WITNESS: Okay.

MR. MULJI: My apologies, Dr. Oskooii; my apologies to the court. I think we are now at the right place.

THE COURT: Okay.

THE WITNESS: That's good.

Q (By Mr. Mulji:) Dr. Oskooii, have you seen these maps before?

A Yes, I have.

Q Can you identify them for us?

A Yeah. So I guess starting with Figure 5, this is a figure from Dr. Trende's report, Figure 12, page 32, of Dr. Trende's report.

Q And these are maps that -- you have reproduced Dr. Trende's figures here in your report; is that correct?

A Yes.

Q Okay.

MR. HOLT: Your Honor, I just want to object. These are not the figures from Dr. Trende's report. He has added to them

and made them into his own. So I just want to make clear for the record, these are not the figures in Dr. Trende's report.

THE COURT: That's fine. Okay.

MR. MULJI: And we're getting there.

THE COURT: Yeah.

MR. MULJI: Thank you, counsel.

Q You have added some arrows to these figures, yes, to indicate certain areas?

A Yes. That is the only thing that is added to this figure.

Q My question for you about these figures is this. You note that Dr. Trende uses these maps to suggest that you perhaps included Hispanic areas and excluded white areas. What did you glean from these dot density maps?

A Yeah. So as I explained in my report, you know, this kind of density plot actually undercuts directly such assertion or claim, because if you just look at this map, you can see many different blue areas which Dr. Trende identifies as Hispanic populations that are not within LD 14 and many white areas that are within LD 14.

And, furthermore, another thing to note is, which is not presented here, but I presented in my report, if you look at the districts that I have, they actually follow municipal boundaries, so they're not cracking municipal boundaries and just selecting certain areas; they're just basically selecting full municipalities along the Yakima Valley coming down.

Q Now, perhaps this goes without asking, but for clarity of the record, did race predominate in the drawing of any maps that you submitted in this case?

A No. Since I did not have access to race and ethnicity data while drawing, it wasn't even a factor for it to even predominate.

Q Let's turn now to Map 3A, and we will try to pull it up on the screen.

MR. MULJI: There we go. Thank you.

Your Honor, my colleague has pulled up the HTML version of Map 3 that was submitted to the court by e-mail.

Q Dr. Oskooii, do you see Map 3A on your scene?

A Yes, I do.

Q All right. And is the approach that you just described a little earlier the same approach you used to draw up Map 3A?

A Yes.

Q Now, you also drew a map labeled "Map 3." Can you explain the difference between Map 3A and Map 3?

A Yeah. There is a very minor difference between 3 and 3A. 3A is introduced with incumbent pairing based on updated addresses that I received.

Q Now, turning specifically to District 14 in this map, is the version of LD 14 in Map 3A the same as the LD 14 in Map 3?

A Yes, it is.

Q And what's distinctive about this particular configuration of

LD 14?

A Relative to other maps, this configuration of LD 14 simultaneously considers both communities of interest in that region, one of them being the Yakima Nation. So it includes the Yakima Nation Reservation in LD 14, as well as all the census-recognized trust lands.

Q Am I correct that the southern border of LD 14 in your map extends beyond the Yakima Reservation down into Klickitat County?

A Yes, it does.

Q Why does the border of LD 14 in your Map 3A look the way that it does in Klickitat County?

A Yeah. The simple answer is that is following the census-designated trust land areas and including them and uniting them with the Reservation boundaries, and it's also following the Reservation boundaries that go into Klickitat County.

Q And did you evaluate Map 3A for adherence to the state's and traditional redistricting criteria?

A Yes, I have.

Q Does Map 3A abide by equal population requirements?

A Yes, it does.

Q Are the districts contiguous?

A Yes, they are contiguous.

Q Are they compact?

A Yes, they're reasonably compact.

Q Do the districts follow political subdivision boundaries?

A To the extent practicable, yes, they do.
Q What about precinct boundaries?
A Yes. They minimize the splitting of precincts.
Q How does your LD 14 and Map 3A address some of the concerns of the Yakima Nation?
A Well, as you can see here is that the Yakima Reservation is kept whole and is united with all the census-recognized trust land areas. But in addition to that, I received additional information and data on public domain lands, and there are 235 public domain lands identified by the Yakima Nation, and Map 3A includes 96 percent of those. It also includes 13 out of 14 fishing access areas identified by the Yakima Nation.
Q And how does the LD 14 that you drew in Map 3A address or account for indigenous voters?
A Yes. So I only calculated the indigenous voter population after-fact in my last report, and I compared it to the Enacted Map, as well as to Dr. Trende's map, and what I found is that Map 3A -- 3A -- has the greatest number of voting-age population Native Americans and also the highest proportion in an LD 14th District. And that's comparing it to Dr. Trende's map, which comes in last, and then the Enacted Map comes in second.
Q Now, did you review Dr. Trende's supplemental report from February 23rd?
A Yes.
Q And for the record, that's -- and I hope I get this right --

at Docket No. 273.

MR. MULJI: If we could pull up Figure 1 on page 5 of that report, please?

Thank you.

Q Dr. Oskooii, do you see that Dr. Trende shaded in red an area of Klickitat County that he said you did not include in LD 14?

A Yes, I see that.

Q What did you observe about the demographics of this region?

A So I looked into the demographics of that region. There are about 15,000 and change people in that area, but out of those 15,000 people, I believe around almost 4 percent of the total population are Native Americans, and this is a predominantly white area.

Q And to confirm, were you aware of these demographics while you were drawing Map 3A?

A No.

Q Intervenors have also noted that your map alters 13 of the state's 49 districts. Why was that necessary in this particular configuration of LD 14?

A Yeah. It's necessary because, as a mapmaker, when you introduce alterations to district boundaries, you will gain and lose population, and, therefore, you have to equalize population, you have to make sure that the districts you're drawing are contiguous, they follow, to the extent practicable, political subdivision boundaries, and minimize the splitting of precincts.

And for those reasons, it was necessary, under this iteration, to impact 13 out of 49 districts.

Q Now, we have seen this number thrown around, that your Map 3A moves 526,621 people to a new district, as compared to the Enacted Plan. What's your assessment of that claim?

A Well, as I explained in my report, I actually don't agree with that total number for one prominent reason. I believe the way Dr. Trende calculated it, he double counted almost 100,000 people who were kept in the same district because, presumably, he did not consider that only the district labels change rather than those people being actually moved to a whole other district.

So the accurate number is actually about 423,000 and change, which amounts to 5.5 percent of the entire state's population being impacted by the changes introduced. And the State of Washington has 7.7 million people and change.

Q And to wrap up our discussion of your Map 3A, what is your opinion regarding Map 3A's compliance with the state's redistricting criteria?

A It is fully compliant, in my opinion.

Q What's your opinion regarding Map 3A's compliance with traditional redistricting criteria?

A It considers traditional redistricting criteria and is compliant.

Q Have you reviewed the map submitted by Dr. Trende in this case?

A Yes, I have.
Q And that was on February 23rd, correct?
A Yeah. I believe I received it very late night on Friday, February 23rd.
MR. MULJI: If we could please pull up Dr. Trende's map?
Q Is that on the screen?
A (No audible response.)
Q Dr. Oskooii, do you see a map on your screen?
A Oh. Yes. Sorry. I didn't hear you.
Q Thank you.
Dr. Oskooii, do you recognize the document that my colleague has pulled up here on the screen?
A Yes.
Q What is it?
A Well, this is an HTML version of Dr. Trende's illustrative or remedial proposal.
Q And this is a map that -- a version that you created, correct?
A Yeah, using exactly this GeoJSON file that Dr. Trende submitted as part of his report.
MR. MULJI: Your Honor, we would submit this as a demonstrative exhibit to this hearing.
THE COURT: Okay.
Q Dr. Oskooii, what is your assessment of Dr. Trende's map?
A Well, first of all, one of the first things I notice is that

Dr. Trende's map cracks the community of interest along Yakima Valley by excluding Wapato, the city of Wapato, and Toppenish. That's the first thing that popped up, but there are other things that I discuss in my report.

Q Does that have any impact on the plaintiffs in this case?

A Well, I didn't conduct any sort of performance analysis. The only thing I can say with respect to that is that two of the plaintiffs live precisely in the two municipalities that were excluded from Dr. Trende's Remedial Legislative District 15. One lives in Toppenish, and one lives in Wapato.

Q And did you evaluate Dr. Trende's map for compliance with other criteria like contiguity, for example?

A Yes, I did.

Q What did you find?

A Yeah. So this is another thing that jumped off to me right away, and it's that if you look at the map, the Columbia River, it's like splitting the east side of Legislative District 15 from the west side, and there are no bridges or ferry crossings to connect the people in those regions. And so based on Washington redistricting criteria, this would not be a contiguous district.

Q And was this issue avoidable?

A Yes. In fact, the Enacted Map avoids this issue, and Map 3A, that I proposed, also avoids this issue by making sure that there's a bridge crossing from one side to the other side.

Q Keeping with LD 15 for a moment, in your report, you had

mentioned an issue with the Hanford Nuclear Site. Can you say more about that?

A Yes. I believe that intervenors have argued in the past that the Hanford Nuclear Site is of strategic importance to the city of Richland for various reasons, and the only thing that I can note is that the Hanford Nuclear Site is segregated from the city of Richland in Dr. Trende's map, but that is not the case in Map 3A.

Q How does Dr. Trende's map compare with yours in terms of compactness?

A Yes. In terms of compactness, Dr. Trende and I have consistently used two compactness scores, Polsby-Popper and Reock. And when it comes to Polsby-Popper, we achieve the same compactness score; however, on the Reock metric, Map 3A scores higher, which means -- which is indicative of a more compact map.

Q And, finally, how does Dr. Trende's map compare in its treatment of the Yakima Nation's stated concerns in this case?

A Yes. Another issue, if I may say, of Legislative District 15 in Dr. Trende's map is that it actually cuts a portion of the Yakima Nation Reservation and segregates it from LD 14 and puts it in LD 15. And this is not just an issue of like trapped polygons or zero-population areas, because that can be addressed and resolved. There are actually people who live on that section. In fact, that section is within the municipal boundaries of Union Gap, so I presume perhaps Dr. Trende did not

want to cut through Union Gap and wanted to maintain that municipality, and that's why that happened. But as I show in Map 3A, that can totally be avoided, and that Union Gap can be kept whole and not cutting into the Yakima Nation Reservation.

Q Dr. Oskooii, thank you for your patience with me and for being here today.

MR. MULJI: And I will pass the witness.

THE COURT: Thanks, Mr. Mulji.

Okay. Who's got this witness? Also Mr. Holt. Okay.

MR. HOLT: I do, Your Honor.

THE COURT: Great.

MR. HOLT: Give me just a minute here to pick up my papers here.

CROSS-EXAMINATION

BY MR. HOLT:

Q Good morning, Dr. Oskooii. How are you?

A Good morning.

Q Nice to see you again.

A Good to see you again too.

Q So before we kind of work through the questions I wanted to talk to you about today, I'm just going to touch on a few things that you just barely covered with plaintiffs' counsel, if that's okay.

Now, you brought up the fact that Dr. Trende's illustrative map cracked community of interest by splitting off Toppenish and

Q Do you see that there?
A Yes. Page 3, yes.
Q And you had stated here, you said, "I prepared" -- you talked about traditional maps and you were given specific geographical criteria that the plaintiffs' counsel wanted included in this particular map, correct? You said you were asked to draw a map that unites East Yakima with the Lower Yakima Valley. Do you see that there in paragraph 8?
THE COURT: You can look at the screen if you want.
THE WITNESS: Thank you, Your Honor.
A Paragraph 8 says, "I prepared four remedial plans that satisfy all of the above requirements, Plaintiffs' Remedial Maps 1 through 4."
I think that was different from what you just said.
Q And then you read on in that paragraph, and it talks about how you were asked to draw another map --
A Yes, yes, yes.
Q -- that unites East Yakima with the Lower Yakima Valley?
A Yes. I believe you're talking about the one that does not include Pasco, which would be Map 5 and 5A.
Q Okay. In the other four maps, aside from Map 5, were you provided any type of geographical guidance of what plaintiffs felt needed to be included in these maps --
A No.
Q -- about where the communities of interest were

geographically?
A Well, they just said that the court stated that it's from East Yakima, along the Yakima Valley region, the population centers that go through Pasco. That's the extent of the information they shared with me.
Q Okay. Do you know if plaintiffs' counsel consulted any racial or political data before they provided you with guidance of what regions they wanted included in your proposed maps?
A They didn't provide guidance on specific regions, and I have no idea what counsel or plaintiffs looked up or did.
Q Do you believe East Yakima is a specific region that they gave you, they wanted included in a particular map?
A I was told that that is the region that forms a community of interest that the court had identified, that this was not their opinion.
Q Okay. Are you aware that the east side of Yakima is the predominantly Latino side of Yakima, with the west side being the white side of Yakima?
A I did not rely on any race and ethnicity data to know that.
Q So you didn't know this when you drew the map?
A No.
Q Is it possible that plaintiffs' counsel knew this when they asked you to draw a map that included this side of Yakima?
A I cannot speculate as to what the plaintiffs' counsel knew or did not know.

Q Okay. So you stated that you did not do any independent research into the orders of the court regarding what remedy it was ordering, correct?
A Sorry. Could you repeat that?
Q You did not do any independent research into the orders of the court about the remedy it was ordering?
A Right. I just trusted that counsel wouldn't lie to me and give me the correct information.
Q Okay. Now, you drew ten total maps, correct?
A Yes.
Q And we're going to focus a bit on Map 3A, as the court has requested us to do.
A Sure.
Q And you have already talked about this briefly, but Dr. Trende criticized your 3A and your 3A -- your 3 and 3A, as it made a lot of unnecessary downstream changes, among other things, correct?
A There were some claims to that effect made, yes.
Q Okay. And you testified just a few minutes ago with your counsel, and dozens of times throughout your reports, that these were not unnecessary but these were necessary things in order to effectuate a remedy, correct?
A Yes.
Q What do you view the word "necessary" to mean, Professor?
A Well, in the sense that I did it because it needed to be done

to abide by Washington redistricting criteria and traditional redistricting principles, particularly as it deals with equalizing population, making sure the districts are contiguous, and et cetera, following municipal boundaries.

Q Okay. I looked up the word "necessary" in the Oxford Dictionary to see if you agree with this general definition.

A Okay.

Q Something that is required to be done or essential. Does that, more or less, summarize what you just said?

A Yeah. I mean, I wouldn't have done it if it was not needed.

Q In your opinion, the changes that were made in Map 3A, outside of the Yakima Valley, were necessary or, in other words, required or essential to effectuate a remedy here, correct?

A Again --

THE COURT: You shouldn't tie him to a dictionary definition, yeah. He said they were needed to perform the function that he was retained to do.

MR. HOLT: He said "required," Your Honor. I will just use that word.

THE COURT: Okay. Required, needed. I mean, it's --

MR. HOLT: Yeah.

THE COURT: You know, is it necessary for you to ask these questions?

MR. HOLT: It is, Your Honor.

THE COURT: Yeah. So it's not required, but it's

going to swear you in or have you testify, but if you will just go to the podium and tell me your name, spelling your last name for the court reporter, and what you want me to hear.

MR. ARONICA: Thank you, Your Honor.

THE COURT: Sure.

MR. ARONICA: Anthony Aronica, A-r-o-n-i-c-a, staff attorney with the Confederate Tribes and Bands of the Yakima Nation, an inherently sovereign Native nation that is federally recognized pursuant to the Treaty of 1855.

Without waiving any of its rights, privileges, or immunities, including, but not limited to, the sovereign immunity from suit, the Yakima Nation is participating today as an interested party, at the court's invitation, and we thank you for that.

THE COURT: You are very welcome.

MR. ARONICA: Thank you for noticing that the remedial legislative redistricting at issue can impact the Yakima Nation and its reservation and the treaty territory that expands most of Central Washington State.

The Yakima Nation did actively participate in the 2021 redistricting process, including that commission's rulemaking process for adopting tribal consultation, holding government-to-government consultation, and separately participating in the comment process, and all of those are included in that commission's written record. The Yakima Nation was supportive of the congressional and legislative districts resulting from its

extensive involvement in that 2021 process.

Today, in this court's remedial process, Yakima Nation's interests and priorities remain the same as written in 2021, specifically to preserve the integrity of the Yakima Reservation's boundaries and, to the extent possible, include communities of interest between the Yakima Reservation and the Columbia River.

The Yakima Nation has provided maps and locations of its public domain trust parcels in Klickitat County, for the purpose of identifying communities of interest south of the Yakima Reservation. And we thank the court for its strong effort to preserve the Yakima Nation's stated interests in the remedial process.

THE COURT: Great. Thank you so much, Mr. Aronica. I have the utmost respect for the Yakima Nation and the tremendous history that precedes contact with the white man and such. You know, I took Indian law in the University of Washington Law School from the great Ralph Johnson and actually worked for him as a researcher for a while and it really opened my eyes to things that I knew nothing about.

So thank you.

MR. ARONICA: Thank you, Your Honor.

Also a graduate of the University of Washington, the first federal Indian law program in the country.

THE COURT: Wow. That's great. Thank you.

At any point, after you hear other witnesses, you have anything you want to say, just let me know, okay?

MR. ARONICA: Thank you, Your Honor.

THE COURT: All right. Okay. What's next?

MS. LEEPER: Your Honor, a brief administrative matter.

THE COURT: Thank you for not saying a "housekeeping" matter.

MS. LEEPER: We remember.

THE COURT: Yeah.

MS. LEEPER: Plaintiffs would like to move into evidence Plaintiffs' Exhibits 533, 534, 535, 536, 537, and 538, the initial rebuttal and supplemental remedial reports of Drs. Oskooii and Collingwood.

THE COURT: Those are admitted into evidence.

(Exhibit Nos. 533 - 538 admitted.)

THE COURT: Thank you.

MS. LEEPER: Thank you.

THE COURT: All right. So that completes plaintiffs' presentation, correct?

MR. HOLT: Your Honor, just briefly. To the extent plaintiffs intend to reserve any witnesses for rebuttal, I say nonexpert witnesses, otherwise, we would just invoke the rule as to those witnesses, that they be not --

THE COURT REPORTER: I'm sorry. Can you say that again? I couldn't hear you.

Q Good afternoon, Dr. Trende.
A Good afternoon.
Q I want to talk a little bit about the map you drew and submitted on February 23rd. You made small changes to the Enacted Version of District 15 to draw your map, right?
A I made the smallest I could, yeah.
Q And your goal was to transform District 15 into a minority-majority district that was typically carried by statewide Democratic candidates, correct?
A Yeah. I mean, if we want to be specific, it's the Hispanic candidate of choice, which, in these races, I understand it's been established as the Democrat. It's a nitpicky distinction, but it is an important one.
Q In your report, you said, "carried by statewide Democratic candidates," correct?
A Yes.
Q And it was a requirement that your remedial district have a Hispanic citizen voting age population over 50 percent, right?
A Correct.
Q And you didn't produce any maps to the court with a Hispanic citizen voting age population less than 50 percent, right?
A That's right.
Q And you did no analysis to determine whether Latino-preferred candidates could win in a district with less than 50 percent Hispanic citizen voting age population, correct?

A That's right. I was just looking to see if it was possible to draw this performing district and keep the Reservation lands intact.
Q And you used racial data to help ensure that your district was over 50 percent Hispanic CVAP, right?
A Yeah, that's right. In my experience, you can look at racial data as long as it doesn't predominate over other interests.
Q And you turn on the Hispanic citizen voting age population percentages in the software that you used?
A That's right.
Q And while drawing District 15, you selected geography based on the racial makeup?
A So subject to making sure traditional redistricting principles are complied with -- I mean, there's lots of other things I would have liked to have done that would have made it easier without doing that, but as a tertiary consideration, yes. I think it's admirable how Dr. Oskooii testifies he went about doing it, but my understanding is it's not how it's required to do. You don't have to be completely race blind, especially once a VRA violation is found.
Q So was that a "Yes"?
THE COURT: The answer can stand, yeah.
Q And you say in your report you explicitly avoided configurations that would have increased the Hispanic citizen voting age population beyond where it landed in your map, right?

A I avoided configurations that would have had higher CVAPs if they required me to cross county lines, create additional county or municipal splits, but I think that's the extent of what I said in the report.

Q All right. Let's pull up your report. And we're going to pull up ECF 273, and this is your supplemental report. And let's look at page 2, the last sentence. And if you read that, it says, "It is likely possible to draw a district with a higher Hispanic citizen voting age population or Democratic performance by allowing race or politics to predominate over these concerns; these maps were excluded from consideration." Do you see that?

A That's right, yeah.

If you let race and politics predominate over the other -- over these concerns, which are the things I mention in the earlier sentence, "county and jurisdictional splits, respecting communities of interest," et cetera, you could do that. But I wasn't going to do that.

Q Okay. Let's turn to Figure 12 on page 29 of your initial report, which is ECF 251, and we're going to pull that up.

And do you see that on the screen there, Dr. Trende?

A I do.

Q This figure contains a dot density map that you created to attempt to show population compactness in the Yakima Valley region, right?

A Correct.

Q And you didn't create a dot density map like this for Map 3A, right?
A For -- no. I don't think 3A was in evidence when I wrote this report, was it?
Q You didn't create a dot density map like this for Map 3 either?
A I actually don't recall, but I'll -- if you say that it's not in there, I don't have a reason to quibble with you.
Q And in your report, you say that you use a blue dot for every 10 Hispanic citizens of voting age, right?
A That's right.
Q And you use an orange X for every 10 white citizens of voting age, right?
A That's correct.
Q And a purple plus sign for every 10 citizens of voting age of other races; is that correct?
A Right.
Q The symbols you chose for white people are about twice as large as the symbols you chose for Latino people, aren't they?
A So I think the size is actually set the same in the R code. The X will cross more, and that's why you layer -- so the way that the program draws this map is it draws it layer by layer. It sets the background, then it draws the orange Xs, and then the blue dots.
One of the problems with doing it that way is that if you

have things be the identical size, the blue dots will cover up completely any orange X. And so having the X take up a little more volume allows it to show when a blue dot is on top of it. It's still a problem because some of these blue blobs do have orange Xs under them that are completely concealed, but it's the best way I know to depict this.

Q Well, it makes it look like the white population is, you know, double the size of the Latino population, doesn't it?

A I don't think so.

Q And when you --

A Because there's white voters that are completely covered by some of the heavy-density Hispanic population.

Q When you submitted this dot density map and draft to your lawyers, nobody brought up how these symbol sizes look misrepresentative to you?

A I don't think they're unrepresentative or misrepresenting anything.

Q And given you're rounding, each of these symbols might represent as few as five people and as many as 14 people, right?

A No. The first one does. The way it works is that if there are like 23 people, Hispanic residents, you would definitely get two dots, but then the third one would have been rounded down, or 27, the third one would appear, because it would round up.

But for every ten, you get one, and then for the last chunk, it's a round.

And I would love to be able to do it one dot for every person, but then you really would get just a giant blob and it's not helpful.

Q But some of these symbols could be nearly twice the population you show or half the population you show, right?

A I'm sorry. I'm not following you.

Q If some of the dots are rounded down to 15 -- down to 5 or up to 14, some of those symbols could be nearly twice the population you claim, which is 10 citizens per symbol, right?

A Well, I don't claim 10. I think I explained that there is this rounding going on. But, yes, at that exact threshold of 5 to 15, there can be a variance in how many people they represent, but I don't know any other way to do it.

Q You have provided no specific threshold for how geographically close the Latino populations would need to be to be compact in your opinion, correct?

A That's correct.

Q And your opinion of the non-compactness of the Latino population in the region is based solely on eyeballing where the dots are located in your dot density map, right?

A Yeah. When I look at this approach, I do it with Justice O'Connor's admonition in mind, that redistricting is a place where appearances matter. And a lot of these, you know, the racial gerrymandering claims, a lot of these things are dependent on a visual inspection of the districts.

Q Well, you have done analysis before in another state legislative Voting Rights Act case where you used metrics to measure the compactness of the minority population, correct?

A Yeah. So in Louisiana, there was an order from the Fifth Circuit saying to look at population compactness as opposed to just district compactness, and the only metric I know of in the literature for doing population compactness is the moment of inertia metric. So that's the metric that I employed there. But even there, I only used it to identify the most compact populations. Since this district is barely 50 percent plus one, you really don't need that here to see what the most compact 50 percent plus one population is. Remember, too, in Louisiana, that was for illustrative maps, where the 50-percent-plus-one threshold is super important.

Q Well, you had a 50-percent-plus-one threshold here too, right, Dr. Trende?

A I wouldn't allow the district to -- I wouldn't take configurations of the district that required me to go into other counties or across municipalities, that's right.

Q And you didn't go below 50 percent, right?

A No. I kept the same rough HCVAP as the illustrative map from Dr. Oskooii had.

Q And the metrics you used in the Louisiana case to measure compactness of the minority population were not accepted by the court, correct?

A The court excluded the only metric I know on the literature for identifying populations. Actually, I don't think it was excluded. It wasn't relied upon. It survived the *Daubert* challenge.

Q Instead of metrics here, your approach is you just know it when you see it, right?

A Just like with a racial gerrymandering claim, the visual inspection is important. I would love for something more specific to be in the law, but it's generally done by visual inspection.

Q And your eyeball test also doesn't take into account other redistricting criteria that go into drawing a district, right?

A I think when you are trying to explain shapes, you can certainly point to things that require it to be a certain way. So I don't know that I'll agree with that, but, you know --

Q Well, it doesn't account for line placement to comply with equal population requirements, for example?

A Every district has to have -- has to comply with equal population requirements, but I guess if there's a bulge or an arm that has to be there for equal population requirements, then that would explain the shape.

Q And it doesn't account for line placement to keep the Yakima Reservation whole, right?

A That's right.

Q And it doesn't account for line placement to avoid political

subdivision splits, correct?

A That's right. If there's a subdivision that has to be included at the boundary, then I guess that would be inexplicable. But I also know from having drawn a lot of maps that if you get one of these little bulges sticking out, in my experience, you try to also include precincts surrounding it, to keep those bulges from occurring.

Q In your initial report, you claim that plaintiffs' Map 3 shifted census blocks in 28 out of the state's 39 counties, correct?

A Yeah. That was a mistake.

Q And the remedial district in your map is labeled 15, not 14, right?

A I think that's right.

Q And this means the state Senate election in your remedial district will be held in an off year, where there's no presidential or gubernatorial election, correct?

A Well, if that were -- so I guess phrasing it as a remedial district, that would be true. I mean, the main goal with drawing that map was just to see if it were possible, like I said, to keep the interests of the Yakima Nation intact while still drawing a district that would perform. So if, as an actual remedial map, that were a problem, you could flip the numbers on it. But, yeah, it would occur in an off-year election as currently numbered.

Q Did the lawyers tell you to number it that way?
A No.
Q And you didn't assess the turnout difference between Latino and white voters in off-year elections in the Yakima Valley region, right?
A That's correct.
Q And so you also didn't do any analysis to see how the turnout differential in --
THE COURT REPORTER: Excuse me, counsel.
THE COURT: You are going too fast, counsel.
MS. HARLESS: I'm sorry.
Q And so you also didn't do any analysis to see how the turnout differential in off-year elections might impact election outcomes in District 15, right?
A Yeah, that's right. I did a similar approach to these analyses that have been done by the Commission and by plaintiffs' experts.
Q When you decided to number your District 15, you didn't give concern to whether that would affect Latinos' ability to elect in your proposed district?
A Well, I don't think it does since, on average, this district performs at 6 percent and performs in all the elections that people had been looking at. And you have a foundational assumption there, which is that I was choosing on how to number it. I just keep it the Enacted Map and changed the boundaries.

I didn't make conscious choices on how to number the districts.
Q Now, you testified earlier that courts have found your testimony unpersuasive before, right?
A That's right.
Q And you were an expert in a Kentucky congressional redistricting case, *Graham v. Adams*, right?
A That's right.
Q And you offered opinions there about the pairing of certain communities in districts, correct?
A I think that's right.
Q And, in fact, you said the judge disagreed with you, but it was a little stronger than that, wasn't it?
A He definitely did not like my testimony there.
Q And the court there found your testimony self-serving and unreliable, correct?
A Yes.
Q You were also an expert in a Maryland state legislative redistricting case, and I think you talked about that one, the *Matter of 2022 Legislative Redistricting of State*, right?
A Right.
Q And in that case, you provided analysis about the compactness of districts?
A Yes.
Q And, there, the court noted the superficial quality of your analysis and gave it little weight, correct?

Expert Report of Dr. Loren Collingwood

Loren Collingwood

2024-03-01

Executive Summary

I have been retained by plaintiffs as an expert, and have been asked to examine Dr. Sean Trende's expert report dated 2/23/2024. In particular, I was asked to compare demographic and political features of the plaintiffs' Map 3A against the intervenors' newly proposed map. Specifically, for both plaintiffs' Map 3A, as well as the intervenors' map, I examine 2022 CVAP demographic counts and electoral performance analysis.

Based on my analysis, I conclude the following:

- Map 3A has an estimated HCVAP of 51.04%, and a non-Hispanic white CVAP of 38.36%.
- Intervenors' map has an estimated HCVAP of 51.29%, and a non-Hispanic white CVAP of 42.95%.
- Based on contests between 2016-2020, the performance results for plaintiffs' map 3A are sufficient to provide Latino voters with an equal opportunity to elect candidates of their choice to the state legislature. The intervenors' proposed map shows that the Latino-preferred candidate does win in all the analyzed contests, but in several contests the Latino-preferred candidate nearly loses the election. Thus, there is a significantly greater risk that the Latino voters are unable to elect their preferred candidate in the intervenors' map relative to the plaintiffs' Map 3A.
- Further, voter turnout is often lower in legislative contests relative to top of the ticket (i.e., governor) contests. Given that turnout gaps tend to benefit whites over Latinos, this suggests that exogenous elections used for electoral performance likely slightly overstate Latino-preferred voters' ability to elect candidates of choice. Therefore, there is more doubt whether intervenors' map will perform for Latino-preferred legislative candidates in comparison to plaintiffs' Map 3A.

My opinions are based on the following data sources: 2020 US Census block data, 2022 American Community Survey (ACS) block group data, plaintiff 3A block assignment files, intervenor alternative map block assignment files, and precinct election results.

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

My qualifications were set forth in my last report dated 2/23/2024.

CVAP Comparisons Across Maps

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 intervenors' map, or LD-14 in plaintiffs' map 3A), then sum the total counts for total population, non-Hispanic white alone, Hispanic, and several other minority groups. For block groups that split legislative district boundaries, I weight them by Voting Age Population (VAP) to estimate the share of the block group that is in vs. out of the district for just that split block group.

Table 1. Demographics 2022 CVAP. Intervenor and Plaintiff 3A maps.

Map	HCVAP	WCVAP	BCVAP	NCVAP	ACVAP
Intervenor D15	51.29	42.95	1.24	0.96	1.33
Map 3A D14	51.04	38.36	1.01	5.25	1.6

Electoral Performance

Figure 1 compares electoral performance across eight exogenous contests with precincts subset to the respective district maps. For precincts split across district lines, the vote is weighted by the proportion of the population of that precinct/VTD that is in vs. out of the district. Across every contest, the plaintiffs' map 3A outperforms the intervenors' map.

In all analyzed statewide elections, the Latino-preferred candidate wins by a sizeable margin in plaintiffs' Map 3A. In intervenors' late-proposed map, in many contests the Latino-preferred candidate nearly loses the election. As I noted in my initial remedial report, given that Latino-preferred state legislative candidates may receive a lower percentage than statewide candidates, there is some doubt whether intervenors' map would perform for legislative candidates. 12/1/23 Report, p. 3. On the other hand, the larger margin in plaintiffs' map 3A is sufficient to provide Latino voters with an equal opportunity to elect candidates to a state legislative district.

Figure 1. Electoral Performance analysis, Intervenors' Map District 15, Plaintiff Map 3A, 2016-2020 statewide general elections, paneled by map alternative.

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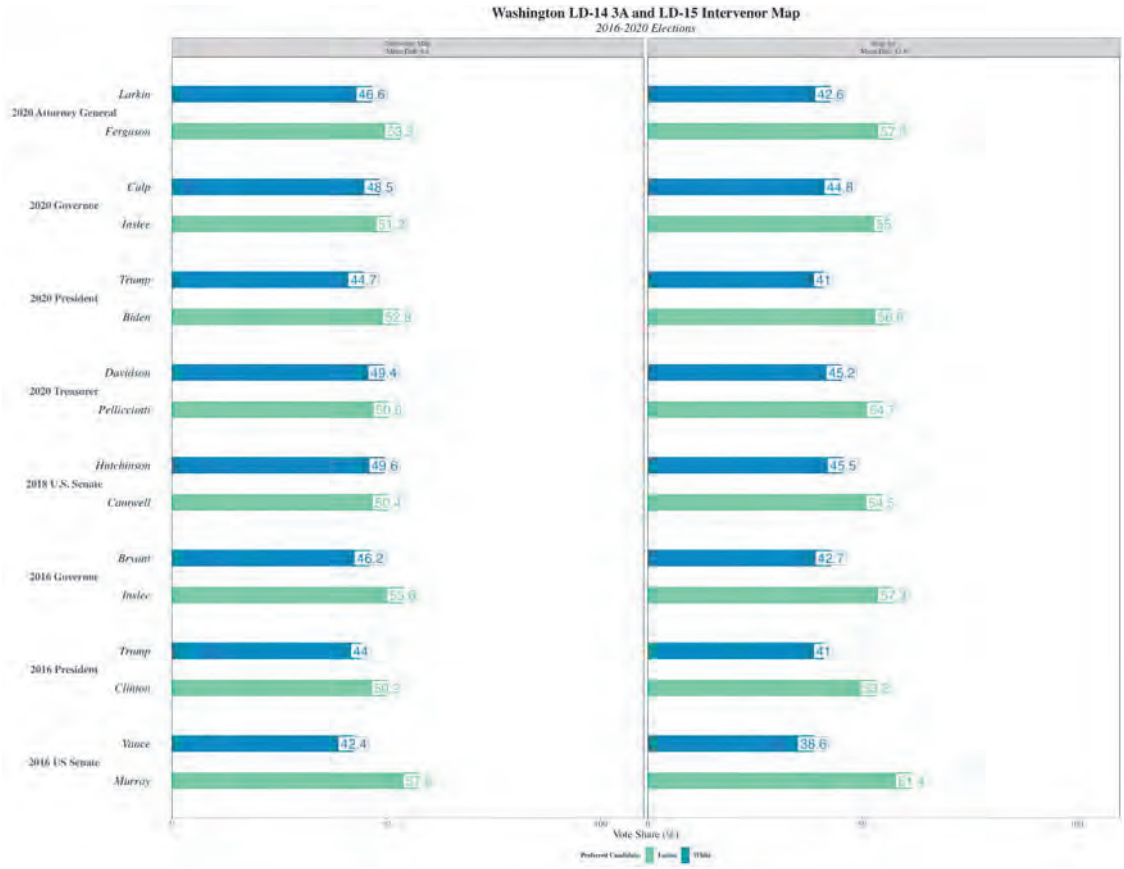
[1] https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap.html



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

Dr. Loren Collingwood

Dated: March 1, 2024

Supplemental Expert Report Submitted on Behalf of Plaintiffs

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

Kassra AR Oskooii, Ph.D.

University of Delaware

March 1, 2024

I. Background and Qualifications

1. I, Kassra AR Oskooii, am over 18 years of age and am competent to testify.

2. My background and qualifications are set forth in my expert report dated and submitted on December 1, 2023. I also attach here my latest curriculum vitae as Exhibit 1.

3. I have reviewed the declaration of Nicholas Pharris from the Secretary of State's office, Document 270. I appreciate Mr. Pharris's standard review for trapped polygons in Map 3A.[1] The tweaks he proposes are valid, and I am happy to assist in incorporating these and any other necessary changes in a new version of Map 3A if the court wishes.

4. I have also reviewed Dr. Trende's supplemental report and map, Document 273. My understanding is that remedial proposals were due on December 1, but I did not receive Dr. Trende's map until late in the evening of Friday, February 23.

5. I have also reviewed the Intervenors' supplemental filing regarding Yakama Nation lands, Document 267; the Yakama Nation's own filed statement on February 23, Document 272; and the email and letter from counsel for the Yakama Nation to the Attorney General's office, which is attached to this report as Exhibit 2.

6. I offer the following responses.

II. Dr. Trende's Map Cracks Communities of Interest in the Yakima Valley

7. Dr. Trende claims that his proposed map addresses the concerns of the Yakama Nation while creating a district (in his map, LD 15) that provides Hispanic voters an opportunity to elect candidates of their choice.

[1] As Mr. Pharris explains, trapped polygons refer to small areas of land caught between county boundaries, congressional districts, legislative districts, county council or commissioner districts, and city or town limits. Trapped polygons also arise in part from the fact that Washington's 2022 precinct shapefiles do not always precisely line up with census block lines, which are the smallest geographic unit that can be used for drawing district lines.

8. With respect to the latter claim, it is unclear how Dr. Trende's Map could remedy the VRA violation with respect to Latinos in the Yakima Valley because the map still cracks the population along the Yakima-Pasco highway corridor that the court identified as a community of interest—the very same community the Enacted Plan cracked and diluted in violation of Section 2.

9. Like LD 15 in the Enacted Map, LD 15 in Dr. Trende's Map continues to segregate communities like Wapato and Toppenish from other similar communities in the Lower Yakima Valley along the route from East Yakima to Pasco.

10. Consequently, Dr. Trende's LD 15 also excludes two of the plaintiffs. I was provided the plaintiffs' addresses, which were stipulated to by all parties.[2] Plaintiff Faviola Lopez lives in Wapato, and Plaintiff Caty Padilla lives in Toppenish. Both are excluded from Dr. Trende's LD 15.

11. Map 3A, on the other hand, unites Wapato and Toppenish with alike communities in Lower Yakima Valley, as well as East Yakima and Pasco, and includes all five Plaintiffs in the remedial district.

12. Beyond cracking this community of interest in the Yakima Valley, Dr. Trende's LD 15 also disregards other redistricting criteria. For example, LD 15 straddles the Columbia River without providing a bridge or ferry crossing, violating Washington's contiguity requirement.

13. Dr. Trende's Map also places the Hanford Nuclear Site in the middle of LD 15, creating another barrier between the eastern and western ends of the district, and separating the site from voters in the City of Richland. Map 3A unifies the Hanford Nuclear Site with

[2] Joint Pretrial Statement and [Proposed] Order, Document 191 at 3-4.

the City of Richland. I understand that Intervenors have previously objected to map proposals that separated the nuclear site from Richland, the community most affected by it, but now propose a map that does just that.[3]

III. Dr. Trende's Map Splits the Yakama Nation Reservation and Reduces Native American Voting Strength in LD 14

14. Dr. Trende's Map displays a lack of care and attention to the boundaries of the Yakama Nation Reservation and Native American voters.

15. By my count, his LD 14 appears to split the Yakama Nation Reservation at least 14 times along the boundary between LDs 14 and 15 in the Lower Yakima Valley, based on the Census designated Reservation boundary. These splits are not limited to zero-population polygons. As shown in Figure 1, one part of the Reservation that is excluded from Dr. Trende's LD 14 has 117 residents, according to the 2020 Decennial Census. Presumably, this land was excised from the Reservation to avoid splitting the city of Union Gap, but as my Map 3A shows, it is possible to keep Union Gap whole while unifying all residents of the Reservation.

[3] Intervenor-Defendants' Proposed Opposition to Plaintiffs' Motion for Preliminary Injunction, Document 61 at 7-8.

Figure 1 – Illustrative Reservation Land Excluded from Dr. Trende's LD 14 (Yakama Reservation Boundary in Pink)

16. This same LD 14-LD 15 boundary line in Dr. Trende's Map also disregards the voting rights violation by splitting the Latino community in the Yakima Valley.

17. Map 3A, on the other hand, balances the need to remedy the cracking of communities of interest in the Enacted Plan with the interests of the Yakama Nation and Native American voters in the region. As I stated above, Map 3A unifies Toppenish and Wapato with other similar communities in the Lower Yakima Valley, as well as East Yakima and Pasco, all of which comprise a community of interest identified by the court.

18. Because Toppenish and Wapato also exist within the boundaries of the Yakama Nation Reservation, I drew LD 14 in Map 3A (and in all other remedial proposals) to include the Yakama Nation Reservation.

19. I also included in LD 14 the Off-Reservation Trust Lands designated by the U.S. Census, which Dr. Trende does not dispute.

20. LD 14 in Map 3A also includes 96% of the Public Domain Trust Land parcels identified by the Yakama Nation in its latest February 23 statement.[4] This is unsurprising because the Public Domain Trust Lands largely overlap with the Off-Reservation Trust Lands designated by the U.S. Census, except for a small handful of additional parcels. Indeed, only 9 of the 235 parcels identified by the Yakama Nation on February 23 are not included in LD 14.[5]

21. Moreover, LD 14 in Map 3A includes 13 (93%) of the Yakama Nation's 14 Treaty Fishing Access Sites identified in its February 23 statement.[6] The single exception is the White Salmon site, which was not included to ensure that LD 14's population deviation remains within the most and least populous legislative districts in the Enacted Map.

22. Dr. Trende mentions three other areas in the "region south of the Yakama Reservation" that he claims were "all … excluded from Remedial Map 3A, District 14" (p. 4). First, the part of Klickitat County containing Husum, like the White Salmon fishing access site, was not incorporated for population parity purposes. Second, while a portion of the Klickitat River watershed is located in LD 17, the majority of that watershed basin is

[4] The Nation identified a total of 235 Public Domain Trust Land parcels, which are listed in a table in Exhibit A of its February 23 statement, Document 272 at 5-12. For each parcel (except for one), the Yakama Nation provided latitude-longitude coordinates and acreage, among other information. I used this information, alongside the Yakama Nation's map, to determine which parcels were and were not included in Map 3A's LD 14. There was only one parcel, identified as MV-171, that lacked latitude and longitude coordinates, so I cannot confirm whether this parcel was included in LD 14.

[5] Three of these parcels are located near the boundary of Map 3A's LD 14 and could easily be added to LD 14. These parcels are identified by the Yakama Nation as MV-72, 1026, and 1025.

[6] Document 272 at 13.

included in LD 14 in Map 3A.[7] Third, the Yakima River watershed, which Dr. Trende also mentions, does not extend south of the Reservation, and Map 3A includes all of the Yakima River basin in LD 14 that intersects with the Reservation, as well as areas of the basin that are excluded from Dr. Trende's LD 14.[8]

23. In short, Map 3A includes as much Yakama Nation territory and historical land in LD 14 as is practical while ensuring that the remedial district does not perpetuate the harm of cracking other communities of interest in the Yakima Valley.

24. Importantly, Map 3A also best addresses the Yakama Nation's wish to avoid "dilut[ion] of the Yakama voting population within the 14th Legislative District."[9] Table 1 below compares the Native American voting age population in LD 14 across the Enacted Map, Plaintiffs' Map 3A, and Dr. Trende's Map.

Table 1 – Native American Voting Age Population (VAP), 2020 Decennial Census

	Enacted Map	**Pls. Map 3A**	**Dr. Trende's Map**
Native American VAP	9,907	9,950	9,636
% of LD 14 VAP	8.5%	9.3%	8.1%

25. Table 1 shows that Plaintiffs' Proposed LD 14 includes *more* Native American voters and a *higher proportion* of Native American voters than both the Enacted Map and Dr. Trende's Map, best according with the request of the Yakama Nation that the legislative

[7] Yakima Klickitat Fisheries Project, Map of Klickitat River Subbasin, http://www.ykfp.org/klickitat/klicksb_map.htm.

[8] Washington State Department of Ecology, The Yakima Basin Integrated Water Resource Management Plan, https://storymaps.arcgis.com/stories/d78e5021c3554fb8a1af1c5020b8d741.

[9] Dec. 22 Letter of Gerald Lewis, Document 267-1 at 2.

map not splinter Native American communities of interest. Meanwhile, Dr. Trende's Map *reduces* the Native American voting age population and voting strength in LD 14 as compared to the Enacted Plan.

26. Finally, Dr. Trende's Figure 1 (p. 5) highlights in red the area of Klickitat County he claims should have been included in LD 14 in Map 3A. In his February 15th disclosure, he reported the total population of this red-shaded area as 15,760, but he neglected to disclose other relevant demographic figures. The total Native American population of the area is 662 (4.2% of the total population), and the Native American voting age population is 498 (3.9% of the voting age population). Meanwhile, the white population of the area is 12,207 (77.5%), and the white voting age population is 10,054 (79.4%). As I have noted previously, I did not review or consider any racial demographic data before or while drawing any of Plaintiffs' Remedial Maps. I checked the demographic information here only after receiving Dr. Trende's supplemental report and map proposal.

IV. Map 3A Has Minimal Impact on Surrounding Districts

25. Dr. Trende repeats his claim that Map 3A disrupts too many districts around LDs 14 and 15 by pointing to the existence of his new proposal and my other remedial proposals that affect fewer districts. As I explain above, his proposal looks much like the Enacted Plan that the court struck down and continues to crack the community of interest in the Yakima Valley. With respect to my remedial proposals, as explained in my prior reports, I provided the Court with multiple options, all of which had core retention rates between 94.1% and 97.5%. Map 3A has a core retention rate of 94.5% and balances Washington

and traditional redistricting criteria, including unification of Yakama lands and voters, with the need to remedy the VRA violation.

26. Dr. Trende concedes that core retention percentages are a "valid way to describe a map's shifts."[10] He goes on to state that there is some need to "place these percentages in context," but then simply restates the percentages as ratios. No matter how one chooses to describe a core retention rate of 94.5%, it still indicates minimal changes to the Enacted Plan.

27. Core retention percentages also inherently provide the context Dr. Trende's own measures of "movement" cannot provide. This is for the simple fact that core retention rates, unlike population totals, account for the magnitude of population shifts compared to the total population of each district.

28. As I explained in my January 5 report, Dr. Trende's method of totaling the people "moved" between districts is inaccurate. He states that 94,742 people from LD 15 in the Enacted Plan (where they comprised 60% of that district) were moved to LD 14 in Map 3A (where they still comprise 60% of the district). The use of the word "move" is misleading because these voters remain, as a group, the supermajority of their legislative district. The only difference is the number assigned to their district. Although that alters the election cycle in which they vote for state senate, it does not separate this group of voters into different districts from one another. This is why redistricting experts use the concept of "core retention"—which Dr. Trende resists—because it focuses on the relevant question of how many voters remain together in a district, whatever the district is labeled.

[10] Supplemental Report of Dr. Trende, at 12, n.4.

V. Map 3A is Reasonably Compact

29. With respect to compactness, Dr. Trende quibbles with my use of planwide compactness measures but does not dispute my conclusion that Map 3A has reasonably compact districts, largely on par with the Enacted Plan.

30. Table 2 provides the Reock and Polsby-Popper compactness scores for Map 3A, Dr. Trende's Map, and the Enacted Map. Remedial Map 3A is slightly more compact than Dr. Trende's Map as measured by the Reock score.

Table 2 – Compactness Scores

	Enacted Map	Remedial Map 3A	Dr. Trende's Map
Reock	0.44	0.43	0.40
Polsby-Popper	0.33	0.32	0.32

VI. Map 3A Has No Meaningful Political Impact on Surrounding Districts

31. As demonstrated in Appendix Table 4 of my January 5th report (p. 42), Map 3A has no substantive impact on partisan outcomes in districts beyond LDs 14 and 15. Republican districts remain Republican, Democratic districts remain Democratic, and toss-ups remain toss-ups.[11]

32. Dr. Trende also effectively concedes that the shifts in political makeup are minor. In his discussion of statewide partisan bias metrics, he states: "These metrics will generally not

[11] Dr. Trende's quibble with my use of terms misses the point. He cannot identify any surrounding districts in Map 3A that would definitively flip in partisan control. And to the extent his complaint is that Map 3A incidentally makes some districts slightly more competitive, my understanding is that Washington's redistricting criteria require plans to "encourage electoral competition." RCW 44.05.090. It also bears mention that, unlike Dr. Trende, I did not view political data when drawing remedial maps, given that Washington law forbids drawing redistricting plans "purposely to favor or discriminate against any political party." RCW 44.05.090.

change much unless a district is outright flipped from Democrat to Republican or vice-versa." He also notes that making an already competitive district, like LD 12, marginally more competitive will not change partisan statewide metrics. This is all true and only serves to confirm that Map 3A does not meaningfully change partisan outcomes in surrounding districts.

VII. Map 3A Has Minimal Impact on Incumbents

27. As I explained in my January 5 Report, the displacement of the incumbents in LD 14 and the Senator from LD 15[12] is a byproduct of relying on the applicable redistricting criteria to draw an LD 14 that unites the population centers forming a community of interest between East Yakima and Pasco, while keeping the Yakama Nation Reservation and Off-Reservation Trust Lands within LD 14.

28. To reiterate, I avoided displacing incumbents wherever possible and remedied most incumbent displacements in the "A" Maps filed with the January 5 Report. Aside from the incumbents in LDs 14 and 15, the only other incumbent displaced in Map 3A is Senator Hawkins, the current LD 12 incumbent who is in LD 7 in Map 3A. As I explained in my January 5 Report, the changes necessary for Senator Hawkins to reside in LD 12 are reflected in Maps 2A, 4A, and 5A but not in 3A, which prioritizes other considerations such as limiting the number of trans-cascade districts. Document 254-1, ¶ 101.

VIII. Conclusion

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

[12] Neither of the two incumbent LD 15 House members are displaced in Map 3A.

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

Executed by:

Dr. Kassra AR Oskooii

Dated: March 1, 2024

Exhibit 1

Kassra A.R. Oskooii

Contact Information

University of Delaware
Political Science & International Relations
403 Smith Hall, 18 Amstel Ave
Newark, DE 19716

(302) 831-2355
(302) 831-4452
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www.kassraoskooii.com

Academic Appointments

University of Delaware
Political Science & International Relations

Associate Professor	2021-Present
Assistant Professor	2016-2021
Provost Teaching Fellow	2022-Present

Current Faculty Affiliations:

Data Science Institute (DSI)	2023-Present
Master of Science in Data Science (MSDS)	2023-Present
Center for Political Communication (CPC)	2016-Present
Center for the Study of Diversity (CSD)	2016-Present

Former Faculty Affiliations:

Race, Justice, Policy Research Initiative (RJPRI)	2017-2023

Education

University of Washington Ph.D., 2016
Department of Political Science
General Fields: American Politics & Political Methodology
Specialized Field: Minority and Race Politics

University of Washington M.A., 2013
Department of Political Science
Center for Statistics & the Social Sciences (CSSS)
Political Methodology Field Certificate (2013)

University of Washington B.A., 2008
Major: Political Science
Minors: Human Rights and Law, Societies, & Justice

Peer-Reviewed Journal Publications

"Anti-Muslim Policy Preferences and Boundaries of American Identity Across Partisanship." ***Journal of Public Policy***. w/ Lajevardi, N. (Forthcoming)

"In the Shadow of September 11: The Roots and Ramifications of Anti-Muslim Attitudes in the United States." ***Advances in Political Psychology***. w/ Lajevardi, N., Saleem, M., and Docherty, M. (Forthcoming)

"Social Mobility Through Immigrant Resentment: Explaining Latinx Support for Restrictive Immigration Policies and Anti-Immigrant Candidates." ***Public Opinion Quarterly***. w/ Hickel, F., and Collingwood, L. (Forthcoming)

"The Participatory Implications of Racialized Policy Feedback." 2023. ***Perspectives on Politics***, 21(3): 932-950. w/ Garcia-Rios, S., Lajevardi, N. and Walker, H.

"Undermining Sanctuary? When Local and National Partisan Cues Diverge." 2023. ***Urban Affairs Review***, 59(1): 133-169. w/ Collingwood, L. & Martinez, G.

"Fight Not Flight: The Effects of Explicit Racism on Minority Political Engagement." 2022. ***Electoral Studies***, 80: 102515. w/ Besco, R., Garcia-Rios, S., Lagodny, J., Lajevardi, N., Tolley, E.

"Hate, Amplified? Social Media News Consumption and Anti-Muslim Policy Support." 2022. ***Journal of Public Policy***, 42: 656-683. w/ Lajevardi, N. and Walker, H. (FirstView)

"Estimating Candidate Support in Voting Rights Act Cases: Comparing Iterative EI and EI-RxC Methods." 2022. ***Sociological Methods and Research***, 51(1): 271-304. w/ Barreto, M., Collingwood & Garcia-Rios, S.

"Beyond Generalized Ethnocentrism: Islam-Specific Beliefs and Prejudice toward Muslim Americans." 2021. ***Politics, Groups, and Identities***, 9(3): 538-565. w/ Dana, K. & Barreto, M.

"Opinion Shift and Stability: The Information Environment and Long-Lasting Opposition to Trump's Muslim Ban." 2021. ***Political Behavior***, 43: 301–337. w/Lajevardi, N. & Collingwood, L.

Covered in: *The Washington Post (Monkey Cage)*

"The Role of Identity Prioritization: Why Some Latinx Support Restrictionist Immigration Policies and Candidates." 2020. ***Public Opinion Quarterly***, 84: 860–891. w/ Hickel, F., Alamillo, R. & Collingwood, L.

"Perceived Discrimination and Political Behavior." 2020. ***British Journal of Political Science***, 50(3): 867-892.

"The Paradox Between Integration and Perceived Discrimination Among American Muslims." 2020. ***Political Psychology***, 41(3): 587-606. w/ Lajevardi, N., Walker, H. & Westfall, A.

Winner of the 2019 American Political Science Association Race, Ethnicity, and Politics Section Best Paper Award.

"Veiled Politics: Experiences with Discrimination among Muslim Americans." 2019. ***Politics and Religion***, 12(2): 629-677. w/ Dana, K., Lajevardi, N., & Walker, H.

"Partisan Attitudes toward Sanctuary Cities: The Asymmetrical Effects of Political Knowledge." 2018. ***Politics and Policy***, 46 (6): 951-984. w/ Dreier, S. & Collingwood, L.

"A Change of Heart? Why Individual-Level Public Opinion Shifted against Trump's Muslim Ban." 2018. ***Political Behavior***, 40: 1035-1072. w/ Collingwood, L. & Lajevardi, N.

Covered in: *The Washington Post (Monkey Cage), Vox, ThinkProgress, NPR, Al Jazeera, Middle East Eye, Psychology Today, & Social Psych Online*

"Old-Fashioned Racism, Contemporary Islamophobia, and the Political Isolation of Muslim Americans in the Age of Trump." 2018. ***Journal of Race, Ethnicity, and Politics***, 3(1): 112-152. w/ Lajevardi, N.

"The Politics of Choice Reconsidered: Partisanship, Ideology, and Minority Politics in Washington's Charter School Initiative." 2018. ***State Politics and Policy Quarterly***, 18(1): 61-92. w/ Collingwood, L. & Jochim, A.

"Muslims in Great Britain: The Impact of Mosque Attendance on Political Behaviour and Civic Engagement." 2018. ***Journal of Ethnic and Migration Studies***, 44(9): 1479-1505. w/ Dana, K.

"eiCompare: Comparing Ecological Inference Estimates across EI and EI: RxC." 2016. ***R Journal***, 8(2): 92-101. w/ Collingwood, L., Barreto, M. & Garcia-Rios, S.

"How Discrimination Impacts Sociopolitical Behavior: A Multidimensional Perspective." 2016. ***Political Psychology***, 37(5): 613-640.

"Mosques as American Institutions: Mosque Attendance, Religiosity and Integration into the Political System among American Muslims." 2011. ***Religions***, 2(4): 504-524. w/ Dana, K. & Barreto, M.

Book Chapters/ Encyclopedic Entries

"Discrimination." In ***Edward Elgar Encyclopedia of Political Sociology*** edited by Maria Grasso and Marco Giugni. (Forthcoming)

"Race and Racism in U.S. Campaigns." 2020. In ***Oxford Handbook on Electoral Persuasion*** edited by Liz Suhay, Bernie Grofman, and Alex Trechsel, 15:278–295. w/ Christopher Parker, Christopher Towler, and Loren Collingwood.

Book Reviews

"Understanding Muslim Political Life in America: Contested Citizenship in the Twenty-First Century." Edited by Brian R. Calfano and Nazita Lajevardi. Philadelphia: Temple University Press, 2019. 248p. ***Perspectives on Politics***.

Public Writing

"Biden reverses Trump's 'Muslim Ban.' Americans support the decision." ***The Washington Post*** *(Monkey Cage)* (27 January, 2021). w/ Lajevardi, N. and Collingwood, L.

"Targeted: Veiled Women Experience Significantly More Discrimination in the U.S." ***Religion in Public*** (21 January, 2020). w/ Dana, K., Lajevardi, N., and Walker, H.

"Here's what the Democrats need to do to get the DREAM Act through Congress." ***LSE American Politics and Policy Blog*** (29 January, 2018). Also covered by Newsweek U.S. Edition. w/ Walker, H. and Garcia-Rios, S.

"Why Individual-Level Opinion Rapidly Shifted Against Trump's 'Muslim Ban' Executive Order." ***Religion in Public*** (17 January, 2018). w/ Collingwood, L. and Lajevardi, N.

"Allies in name only? Latino-only leadership on DACA may trigger implicit racial biases among White liberals." ***LSE American Politics and Policy Blog*** (28 September, 2017). w/ Garcia-Rios, S. and Walker, H.

"Protests against Trump's immigration executive order may have helped shift public opinion against it" ***LSE American Politics and Policy Blog*** (12 February, 2017). w/ Collingwood, L. and Lajevardi, N.

Grants, Fellowships, & Awards

Nominee of UD's Excellence in Teaching Award	(2023)
UD Provost Teaching Fellow	(2022-)
APSA Race, Ethnicity, and Politics Best Paper Award w/ N. Lajevardi, H. Walker and A. Westfall	(2019)
AAPOR Student-Faculty Diversity Pipeline Award	(2019)
CTAL Instructional Improvement Grant: Engaging Diversity in Political Science w/ Kara Ellerby ($11,000)	(2018)
POSCIR Seed Research Grant ($1,500)	(2018)
DEL General University Research Grant ($7,500)	(2017)
UW Political Science Research Fellowship (est. $13,000)	(2016)
Dissertation Improvement Research Grant, UCLA ($3000)	(2015)
Dean Recognition for Exceptional Pedagogical Contribution, UW	(2014)
Best Graduate Paper in PoliSci (w/Hannah Walker), UW	(2014)
UW Center for Democracy & VRA Research Fellowship ($5,000)	(2014)
UW Center for Democracy & VRA Research Fellowship ($5,000)	(2013)
Center for Statistics and the Social Sciences Grant ($1,000)	(2013)
UW WISER Research Grant ($2500)	(2011-14)
UW WISER Survey Research Fellowship ($20,000)	(2011-14)
Grad. Opportunities & Minority Achievement Fellowship ($4,000)	(2010-11)

	Donald R. Matthews Graduate Fellowship ($40,000)	(2010-11)
	Jody Deering Nyguist Award for Excellence in Public Speaking	(2008)

Research Center Affiliations	Race, Justice, Policy Research Initiative, UD	(2017 -)
	Center for Political Communication, UD	(2016 -)
	Center for the Study of Diversity, UD	(2016 -)
	UW Center for Democracy and Voting Rights Research	(2013-14)
	Washington Institute for the Study of Race & Ethnicity (WISER)	(2010-16)
	Center for Social Science and Statistics (CSSS)	(2010-16)
	Washington Survey Research Center (WASRC)	(2010-15)

Teaching Experience

University of Delaware (2016 -)

- POSC 150: Intro to American Politics (x10)
- POSC 230: Intro to Politics and Social Justice (x2)
- POSC 413: Minority Politics, Representation, and Voting Rights (x4)
- POSC 867: Race, Ethnicity, and Politics (Graduate Seminar) (x3)
- POSC 807: American Political Behavior (Graduate Seminar) (x1)

University of Washington (2011-2016)

- POLS 202: Intro to American Politics (x2)
- POLS 357: Minority Representation and the Voting Rights Act (x1)
- POLS 205: Political Science as a Social Science (TA)
- POLS 317: US Race and Ethnic Politics (TA)
- POLS 353: US Congress (TA)
- POLS 503: Advanced Research Design and Analysis (TA)
- LAW E 558: Voting Rights Research and the Law (TA)

External Invited Talks/Panels

"Diversity and the State of Democratic Citizenship." Featured invited roundtable sponsored by the ***Center for the Study of Democratic Citizenship***. April 23, 2021.

"Shocks to the System: Capturing Opinion Shift and Stability Toward Trump's Muslim Ban." Keynote Speaker at the Democracy and Diversity Triannual Conference at the ***Center for the Study of Democratic Citizenship*** in Montreal, Canada. April 24-25, 2020. [Cancelled Due to COVID-19]

"The New American Electorate." Panelist. ***Princeton University***. Event sponsored by the Center for the Study of Democratic Politics. April 3, 2020. [Cancelled Due to COVID-19]

"Neighboring Identities: Psychological and Political Reactions to Generalized and Particularized Anti-Immigrant Appeals." w/Sergio Garcia-Rios. ***University of Toronto***. Talk Sponsored by the Department of Political Science. March

6, 2020.

"History, Institutions, and Theory Research Coordination Network on Racial and Ethnic Politics." Panelist. ***University of Pennsylvania***. Event sponsored by the American Political Science Association's Special Projects Fund and the Center for the Study of Ethnicity, Race and Immigration at Penn. February 28-29, 2020.

"Using Observational and Experimental Data to Examine the Sociopolitical Consequences of Perceived Discrimination." ***Rutgers University***. Talk sponsored by the Emerging Trends Lecture Series & the Center for the Experimental Study of Politics and Psychology. April 27, 2018.

"A Change of Heart? Using Panel Designs to Establish Causality with Real Events." w/Loren Collingwood. ***Princeton University***. Talk sponsored by the Center for the Study of Democratic Politics. April 26, 2018.

"Using Observational and Experimental Data to Examine the Sociopolitical Consequences of Perceived Discrimination." ***University of California Los Angeles***. Talk sponsored by the Race, Ethnicity and Politics Workshop. March 5, 2018.

"Muslim-American Attitudes, Sociopolitical Behavior, and Identity." Panelist/Section Presenter. ***University of California Los Angeles***. Event sponsored by the Luskin School of Public Affairs & the National Science Foundation. December 15, 2017.

"Muslim-American Political Behavior." Panelist/Section Presenter. ***Menlo College***. Event sponsored by Menlo College & the National Science Foundation. December 16, 2016.

Internal or Public Invited Talks/Panels

"How Democratic is the U.S. Constitution, and to What Extent did the Founding Fathers Oppose Majority Rule?" Speaker. University Day Public Lecture. March 18, 2023.

"Race, Ethnicity, and Gender in the 2020 Election." Speaker. Panel sponsored by the the University of Delaware POSCIR. December 14, 2020.

"Building Community: Scholarship and Connection among Faculty of Color." Speaker. Panel sponsored by the Center for the Study of Diversity (CSD) at the University of Delaware. February 24, 2020.

"Executive Power and the U.S. Democracy." Talk sponsored by the 2019 YALI Mandela Washington Fellows Program at the University of Delaware. July 2, 2019.

"Opinion Shift and Stability: Long-Lasting Opposition toward Trump's Muslim Ban." Talk sponsored by the Department of Sociology and Criminal Justice Colloquium Speaker Series at the University of Delaware. April 24, 2019.

"Old-Fashioned Racism and the Roots of Contemporary Islamophobia." Talk sponsored by the Center for the Study of Diversity (CSD) Colloquium Speaker Series at the University of Delaware. December 6, 2018.

"Understanding Executive Power in the United States." Talk sponsored by the 2018 YALI Mandela Washington Fellows Program at the University of Delaware. July 2, 2018.

"The Inclusion and Exclusion of Minority Groups in the United States." Talk sponsored by the 2017 YALI Mandela Washington Fellows Program at the University of Delaware. July 11, 2017.

"Inclusion and Exclusion: Perceptions of Discrimination in the Workplace." Diversity Summit Presenter. Talk sponsored by the Office of Equity and Inclusion at the University of Delaware. June 20, 2017.

"What Happens Now Part II? A Forum to Discuss Bigotry & Closed Borders in the Trump Era." Speaker. Panel sponsored by the Department of Women and Gender Studies, Sociology and Criminal Justice, Political Science and International Relations, & the College of Arts and Sciences at the University of Delaware. February 13, 2017.

"Forum on the Travel Ban Executive Order." Speaker. Panel sponsored by the University of Delaware Provost Office. February 7, 2017.

"What Happens Now Part I? Fear, Diversity, and Inclusion in Post-U.S. Election." Speaker. Panel sponsored by Women and Gender Studies, Sociology and Criminal Justice, Political Science and International Relations, History, & the College of Arts and Sciences at the University of Delaware. November 30, 2016.

"Race, Religion, and Gender." Election Central Panelist. Event sponsored by the Center for Political Communication at the University of Delaware. November 8, 2016.

Select Conference Presentations

2021

"Partisan Winners and Losers: Testing Alternative Frames of Congressional Election Results Among White and Latino Voters." Online Paper Presentation at the Annual American Political Science Association Conference (APSA).

"Kissing Up and Kicking Down: How Immigrant Resentment Impacts Latinx

Support for Donald Trump and Restrictive Immigration Policies." Online Paper Presentation at the Annual American Political Science Association Conference (APSA).

"How do Political Attacks Affect Racial and Ethnic Self-Identities?" Online Paper Presentation at the Annual Midwest Political Science Association Conference (MPSA).

"Kissing Up and Kicking Down: How Immigrant Resentment Impacts Latinx Support for Donald Trump and Restrictive Immigration Policies." Online Paper Presentation at the Annual Midwest Political Science Association Conference (MPSA).

2019

"The Significance of Politicized Group Identities: Re-examining the Relationship between Contact with Punitive Political Institutions and Political Participation." Paper Presentation at the Annual American Political Science Association Conference (APSA) in Washington DC.

"Threat or Reassurance? Framing Midterm results among Latinos and Whites." Paper Presentation at the Annual American Political Science Association Conference (APSA) in Washington DC.

"When American Identity Trumps Latinx Identity: Explaining Support for Restrictive Immigration Policies." Paper Presentation at the Annual American Political Science Association Conference (APSA) in Washington DC.

"Anti-Minority Politics and Political Participation: Evidence from Four Countries." Paper Presentation at the Annual American Political Science Association Conference (APSA) in Washington DC.

2018

"Assessing the Link between Interactions with Punitive Political Institutions and Political Behavior." Paper Presentation at the 2018 Symposium on the Politics of Immigration, Race, and Ethnicity (SPIRE) Meeting in Philadelphia, PA (University of Pennsylvania).

"Are Integrated Muslim Americans More Likely to Perceive Discrimination?" Paper Presentation at the Annual American Political Science Association Conference (APSA) in Boston, MA.

"Opinion Shift and Stability: Enduring Individual-Level Opposition to Trump's Muslim Ban." Paper Presentation at the Annual American Political Science Association Conference (APSA) in Boston, MA.

"Assessing the Link between Interactions with Punitive Political Institutions

and Political Behavior." Paper Presentation at the 2018 Collaborative Multiracial Post-Election Study (CMPS) Meeting in Los Angeles, CA (UCLA).

2017

"A Change of Heart? Why Individual-Level Public Opinion Shifted against Trump's Muslim Ban." Paper Presentation at the Annual American Political Science Association Conference (APSA) in San Francisco, CA.

"Veiled Politics: Experiences with Discrimination among American Muslims." Paper Presentation at the Annual American Political Science Association Conference (APSA) in San Francisco, CA.

"The Racial Shield as Racism Exoneration: Explaining White Racist Support for Conservative Minority Candidates." Paper Presentation at the Annual Western Political Science Association Conference (WPSA) in Vancouver BC, Canada.

2016

"Assessing the Mechanism Linking Discrimination to Democratic Engagement." Paper Presentation at the Annual American Political Science Association Conference (APSA) in Philadelphia, PA.

"Estimating Candidate Support: Comparing EI and EI-RxC." Paper Presentation at the Annual Midwest Political Science Association Conference (MPSA) in Chicago, Illinois.

Student Supervision

Sadie Ellington, Dissertation Committee Member (POSC)
Enes Aksu, Dissertation Committee Member (POSC)
Enes Tuzgen, Dissertation Committee Member (POSC)
Olga Gerasimenko, Dissertation Committee Member (POSC)
Furkan Karakayan, Dissertation Committee Member (POSC)
Richard Takyi Amoah, Dissertation Committee Member (ECON)
Sheila Afrakomah, Dissertation Committee Member (ECON)
Ahmet Ates, Dissertation Committee Member (POSC)
Charles Mays, Long Paper and Dissertation Chair (POSC)
Ian Mumma, Long Paper Committee Member (POSC)
Clark Shanahan, Long Paper Committee Member (POSC)

Rachel Spruill, Undergraduate Honors Thesis Chair
Jessica Sack, Undergraduate Honors Thesis Chair
Jordan Spencer, Undergraduate Faculty Mentor for the McNair Program
Lauren Turenchalk, Undergraduate Research Supervisor

Professional Service

Editorial Board Member

Politics and Religion (6/2018 - 12/2021)

Discipline Service

American Political Science Association (APSA) REP Section Chair (2021-2022)

Western Political Science Association (WPSA) Task Force on Equity, Inclusion, and Access in the Discipline (2020-2021)

APSA Race, Ethnicity, and Politics Best Paper Award Committee Member (2020)

University Service

2019 Summer Educational and Cultural Experience Program (SECEP) Lecturer of Politics and Justice in the United States. (July 27 - August 20, 2019)

Manuscript Reviewer/Referee

American Journal of Political Science, American Political Science Review, American Politics Research, British Journal of Political Science, Belgian Federal office for Science Policy, Behavioral Sciences of Terrorism and Political Aggression, Cambridge University Press, Electoral Studies, European Political Science Review, International Journal of Public Opinion, Journal of Elections, Public Opinion & Parties, Journal of Ethnic and Migration Studies, Journal of Public Policy, Journal of Politics, Journal of Race, Ethnicity and Politics, Migration Studies, Perspectives on Politics, Political Behavior, Politics, Groups, and Identities, Political Psychology, Political Research Quarterly, Politics and Religion, Public Opinion Quarterly, Social Science Quarterly, Time-Sharing Experiments for the Social Sciences

Conference Coordination

Politics of Race, Immigration, and Ethnicity Consortium (PRIEC) at the University of Delaware. (2020)

Politics of Race, Immigration, and Ethnicity Consortium (PRIEC) at the University of Washington. (2013)

Latinos and the Voting Rights Act. Center for Democracy and Voting Rights Research at the University of Washington Law School. (2013)

Islam in the Public Sphere Conference. Washington Institute for the Study of Race & Ethnicity (WISER). (2011)

Select Expert Consulting Experience

State of Maryland Attorney General's Office; 2021 MD Redistricting

Baltimore County Branch of the NAACP v. Baltimore County, Maryland, No. 1:21-cv-03232-LKG (D. Md. 2022)

Common Cause Florida v. Lee, 4:22-cv-109-AW-MAF (N.D. Fla.)

Common Cause Florida v. Byrd, No. 4:22-cv-00109-AW-MAF (N.D. Fla. 2022) [Deposed]

Dickinson Bay Area NAACP Branch v. Galveston County, Texas, No. 3:22-cv-117-JVB (S.D. Tex. 2023) [Deposed & Testified]

Reyes v. Chilton, 4:21-cv-05075-MKD (E.D. Wash. 2021) [Deposed]

Roswell Independent School District (RISD); 2022 Redistricting

Caroline County Branch of the NAACP v. Town of Federalsburg, Civ. Action No. 23-SAG-00484 (D.Md. 2023)

Cobb County Board of Elections and Registration, No. 1:22-cv-02300-ELR (N.D. Ga. 2022)

Coca v. City of Dodge City, et al. Case no. 6:22-cv-01274 (D Kan. 2022) [Deposed & Testified]

Soto Palmer v. Hobbs, No. 3:22-cv-05035-RSL (W. D. Wash. 2021)

Previous Research Positions

Senior Researcher, Washington Poll 2010-2014
Public Opinion Survey Design, Programming, and Analysis.

Researcher, Center for Democracy & Voting Rights Research 2013-2014
Racially Polarized Voting (RPV) Analysis of jurisdictions in states such as: California, Florida, Texas, and Washington.

Investigator, Washington State Charter School Initiative 2013
Precinct and school district level data collection and analysis of the I-1240 Vote for S360 Polling Firm and Melinda & Gates Foundation.

Skills & Additional Information	**Software**: R, STATA, LaTeX, ESRI, DRA **Languages**: Farsi (Persian)–Native Speaker **R Packages**: eiCompare (contributor), eiExpand (contributor)

Exhibit 2

From:	Anthony Aronica
To:	Washines, Asa K. (ATG)
Cc:	Jeremy Takala; Deland Olney; Ruth Jim; Terry Goudy-Rambler; Gerald Lewis; George Meninick; Ethan Jones; Dawn Vyvyan; Willow Howard
Subject:	Re: Soto Palmer - proposed remedial redistricting maps
Date:	Friday, December 29, 2023 12:15:31 PM
Attachments:	Letter_YN_AGO_Redistricting (12.29.23).pdf WA_Map4.pdf WA_Map3.pdf

[EXTERNAL]

Dear Asa,

Attached is the Chairman's response to the AG's Office regarding your request for comment on the proposed remedial maps. Out of those proposed, maps 3 and 4 most closely resemble the current 14th Legislative District that the Yakama Nation consulted in advocacy for and include the most off-Reservation trust allotments.

Regards,
Tony

On Mon, Dec 18, 2023 at 3:23 PM Anthony Aronica <anthony@yakamanation-olc.org> wrote:

> Dear Asa,
>
> The referenced legal brief and 5 maps did not stay attached in the forward to me. Are you able to resend those?
>
> Thank you,
> Tony
>
> On Mon, Dec 11, 2023 at 3:53 PM Ethan Jones <Ethan@yakamanation-olc.org> wrote:
>
> > Dear Mr. Washines,
> >
> > Thank you for reaching out on this important issue, and I understand from your email that the deadline is December 22nd. We will discuss this and get back to you.
> >
> > Thanks,
> >
> > Ethan
> >
> > On Mon, Dec 11, 2023 at 3:49 PM Washines, Asa K. (ATG) <asa.washines@atg.wa.gov> wrote:
> >
> > > Chairman Lewis & Councilman Takala,
> > > Below is the legal brief and 5 redistricting maps proposals from the plaintiffs in the Voting Rights Act case challenging the Legislative District 15.
> > > The plaintiffs say that their proposals 1 and 2 “keep[] the Yakama Nation Reservation intact in

one legislative district," now renamed LD 14, and contain "some of the Yakama Nation trust lands." They say that their proposals 3 and 4 "combine[] the Yakama Nation Reservation and all of the Yakama Nation trust lands and fishing villages in LD 14." Finally, they say that their proposal 5 "includes all of the Yakama Nation Reservation in LD 14 but not the off-reservation trust lands or fishing villages."

Our expert has not yet independently verified what the Plaintiffs say about inclusion of the Yakama reservation and trust lands. The deadline for the parties to comment on these proposals is December 22. In theory, the Yakama Nation could file an amicus brief before then, or they may be able to file a comment later after the Court appoints a special master to review the proposed maps (but we don't know yet what that process will look like)

Our office would like to get your thoughts on the proposals.

Let me know if you have any questions.

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--

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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

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

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Proceedings recorded by mechanical stenography; transcript produced with aid of computer

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PROCEEDINGS

THE CLERK: We are here in the matter of Soto Palmer, et al. versus Hobbs, et al. versus Trevino, et al., Cause No. C22-5035, assigned to this court.

Counsel, please make your appearances for the record.

MS. WAKNIN: Sonni Waknin on behalf of plaintiff, Your Honor. With me is Chad Dunn, Aseem Mulji, Ernest Herrera, and Edwardo Morfin on behalf of plaintiff.

THE COURT: Thank you. Usually when it's "et al.," it means other people. This really means "all."

MR. HUGHES: Good morning, Your Honor. Andrew Hughes on behalf of the State of Washington. With me, as always, is Cristina Sepe.

MR. STOKESBARY: Andrew Stokesbary on behalf of Intervenor-Defendants, and with me is Dallin Holt.

THE COURT: Great. Thank you very much.

And listening on the telephone is the court-appointed expert, Karen McDonald. You can hear us okay, Dr. McDonald?

THE CLERK: She's muted, Your Honor.

THE COURT: Just nod your head. Yeah, we're doing fine.

So we're here on the motion to stay proceedings from intervenor, talk about that and the possible next steps. So I think I'll start with Mr. Stokesbary and have some oral

argument, some response from the plaintiffs and the State on where we go from here.

MR. STOKESBARY: Thanks, Your Honor. May it please the court. I'm Andrew Stokesbary on behalf of Intervenor-Defendants, Alex Ybarra, Ismael Campos, and Jose Trevino.

Your Honor, throughout this litigation, plaintiffs have continually alleged that the enacted plan unlawfully dilutes Hispanic voting strength in the Yakima Valley. But by their own expert testimony, the five proposed remedial maps that they've submitted to the court would all reduce the Hispanic citizen voting age population in the challenged district and, in turn, increase the amount -- the percentage of non-Hispanic voters.

Plaintiffs say that this is, sort of, acceptable, because the remedial maps would now, quote/unquote, perform for Latino voters. But intervenors, again, all of whom are Latino voters themselves, Your Honor, categorically disagree that the only way to give Latino voters a voice in the Yakima Valley is to reduce the number of Latino voters in the district and replace them with non-Latino voters.

This underscores one of intervenors' main arguments: That this court has a continuous duty to affirm Article III standing, and if a remedy is not possible, if there's no redressability, the plaintiffs have no standing.

I'll also point out, Your Honor, that, in its memorandum of

decision, the court found that LD 15, as enacted, quote, results in an inequality in the electoral opportunities enjoyed by the white and Latino voters in the area, and directed the clerk to enter judgment in favor of plaintiffs -- in plaintiffs' favor on their Section 2 claim.

We assume this was their Section 2 results claim, and in their amended complaint, plaintiffs have asked for the order and implementation -- order the implementation and use of a valid state legislative plan that includes a majority Latino state legislative district in the Yakima Valley.

But by plaintiffs' own expert -- expert witness expert report, Map 5 doesn't actually contain a majority-Hispanic CVAP population.

Now, plaintiffs, in their reply brief, have, sort of, said that intervenors' concern about reduction of Hispanic CVAP is misplaced. I think the phrase they used was "wrong, as a matter of law." But they only cite to cases that hold that a district without a majority-minority CVAP may be a remedy in some cases. There is no authority, to intervenors' counsels' knowledge, that a single district that's been challenged and found to have a minority vote dilution can be remedied by further vote dilution.

Plaintiffs failed to cite any Section 2 cases where that was the case. One of the cases they cited was *Bartlett v. Strickland*. That case challenged the district that started out at 39 percent African American, and the question was by how much

to raise the African American percentage.

Another one of the cases cited was one of the Alabama redistricting cases that just went through the U.S. Supreme Court, and the challenge there was whether to add a second African American-majority district. So that remedy resulted in the creation of a second district, where the African American voting percentage is increased.

Again, intervenors aren't aware of an instance where there was already a majority-minority CVAP district, and the remedy is to dilute the minority vote, even after there's been found to be vote dilution.

I would also like to point out that plaintiffs have not, actually, shown that any of their maps would perform for Latino-preferred candidates in actual legislative elections, which is the whole point of this exercise.

Dr. Trende, intervenors' expert, his report, in Appendix II, measures the partisanship of the different districts. In the last two columns for each map, he shows, sort of, the average partisan tilt of the districts, and he shows that, depending on which, sort of, metric you use, which elections you average out, there's a between 1.8- and 2.2-point Republican advantage in the current enacted 15th District.

This mirrors what we heard at trial, where the commissioners thought that it would have a modest one- or two-point Republican advantage, but Senator Nikki Torres won

that election by 35 points, which shows that she outperformed that index by 33 points.

Now, Dr. Trende's analysis shows that the remedial districts that are being proposed would have a Democratic advantage of, perhaps, 12 to 14 points, dependent on which configuration is used. If Nikki Torres outperformed that by 33 points, she would still win by 20 points, but plaintiffs insist that Nikki Torres is not the Latinos' preferred candidate of choice.

Plaintiffs have, sort of, countered that you can fully reconstruct legislative elections, because there's some areas that are out of the district, some areas that remain in the district. And while that's true, we think that plaintiffs could, sort of, show redressability by doing a partial reconstruction and augmenting the missing areas through some sort of statistical or simulative model that would, kind of, extrapolate results, but they haven't even attempted to do so, they haven't even attempted to explain how the Latino-preferred candidate of choice would be able to win in this district after the only endogenous election that has been contested in the 15th District resulted in a Republican, who is, according to plaintiffs, not the Latino candidate of choice, beating the partisan index by 33 points.

Sorry, Your Honor. I'm getting a little Marco Rubio dry mouth.

THE COURT: Okay. Do you have a cup of water there? I haven't heard reference to that one in a while.

MR. STOKESBARY: I apologize, Your Honor.

THE COURT: No problem.

MR. STOKESBARY: And thank you for your indulgence.

THE COURT: Sure.

MR. STOKESBARY: If intervenors are wrong about this, if plaintiffs don't have to show that the district would perform for Nikki Torres, then intervenors would suggest that the district doesn't need to be a 12- to 14-point Democrat advantage.

As I noted a minute ago, Your Honor found that the district, as enacted, resulted in unequal opportunities, not unequal guarantees but unequal opportunities. We don't think that a 12- to 14-point advantage is necessary to provide an opportunity. We think that, perhaps, a three- or five-point advantage would be more than sufficient to provide an opportunity to elect candidates of choice.

And I'll also point out that this is one of several reasons why an evidentiary hearing is still required, where our experts, plaintiffs' experts, can testify and be subject to both direct and cross-examination to, sort of, understand how they view competitiveness, what margin they believe is necessary to ensure opportunity versus certainty, and allow the court and Your Honor to weigh the competing expert testimony.

And, again, while it's, obviously, no secret that intervenors have disagreed with the court's decisions on the merits, we still have significant problems with the proposed remedies, even if they exist outside of the district that has been challenged and the remedial district itself that has been proposed by plaintiffs in their five maps.

The court has a duty to minimize changes beyond what's strictly necessary to remedy the affected district. I want to point to two cases, Your Honor. In *Upham v. Seamon*, which can be found at 456 U.S. 37, the Supreme Court said that court-ordered reapportionment plans are subject, in some respects, to stricter standards than plans developed by state legislature. In *Perry v. Perez*, which can be found at 565 U.S. 388, the Supreme Court said that a federal district court, in the context of legislative reapportionment, should follow the policies and preferences of the State as expressed in statutory and constitutional provisions or in the reapportionment plans provided by the state legislature, whenever adherence to state policy does not detract from the requirements of the federal Constitution.

So, Your Honor, we think that plaintiffs' maps as they exist beyond the remedial district fail on this count for several reasons.

The maps produce unnecessary shifts in partisan performance. In Maps 1 and 3, Legislative District 12 goes from

a Republican advantage of about eight points to about four to five points. In Maps 1 through 4, Legislative District 17 goes from a district with about a one-point Republican advantage, on average, to one-and-a-half- to two-point Democratic advantage, on average.

And, again, this is another example of why we think that we need an evidentiary hearing with expert testimony, so both experts can explain the meaning of the shifts.

Intervenors contend that a two-point shift that takes the district from plus one Republican to plus one Democrat, or vice versa, is significantly more meaningful than a two-point shift that takes a Democrat from plus 20 Republican to plus 18 Republican.

Our second concern is that the maps move far more voters than are necessary. In their Maps 1 through 4, plaintiffs would move about 500,000 Washingtonians into different districts. For context, the average size of a legislative district is about 157,000 people. So in order to remedy one district, plaintiffs would have less than -- in their first four maps, move three districts' worth of people just to fix one district.

For further context, as I noted a second ago, the remedial district, the partisan advantage would go from about plus two Republican to about plus 12 or plus 14 Democratic. So if you, sort of, run the numbers, looking at about how many people are registered to vote, what average turnout is, you're talking

about a net shift of about 15,000 votes. So these maps would move 500,000 voters just to achieve a net change in 15,000 or so votes.

That's an enormous change that we think is unnecessary, and plaintiffs' fifth map, sort of, shows that it is unnecessary. We think that Map 5 still has too many changes, but, you know, at least, has far fewer changes than Maps 1 through 4. Map 5 only moves about 190,000 people around the state.

Our third complaint is that the plaintiffs' maps wantonly move Republican incumbents into either Democratic districts or into districts with other Republican incumbents. Some of these seemed a little gratuitous.

All three of the incumbents in the 14th Legislative District were moved in, at least, one of the maps by between a third of a mile and a mile and a half. The two House incumbents in the 15th District in Map 5 were moved out of their district by between 500 feet and half a mile.

And as plaintiffs state -- even Your Honor had noted -- I have another job outside of the courtroom, representing intervenors, and in one of the maps, they, actually, cut my neighborhood in South Auburn in half and put me a half a mile outside my district. They put me into a district that is centered on Enumclaw, Snoqualmie, and North Bend.

So while plaintiffs proposed a set of five new alternative maps, and we appreciate that, a few points on those:

First, they weren't timely. They weren't submitted by the court's December 1st deadline, so intervenors' expert hadn't had a chance to fully review them, we haven't had a chance to fully brief them, and the maps still don't fix every issue.

The senator in the 12th District still remains about a half mile outside of his district in two of the maps, and in Map 5, the two Legislative District 15 incumbents still remain between 500 feet and half a mile outside of the 15th District.

Last point, Your Honor, and then I'll wrap up.

It's, sort of, clear, from all these geographical miscues, that plaintiffs and their expert don't really understand Washington geography. I think the most illustrative example is the number of trans-Cascades districts included in their plan. It's just simple math that there's always going to have to be one district that is divided between Eastern and Western Washington. Historically, that has always been done in Skamania County, down along the Columbia Gorge.

In the enacted plan, for the first time, I think, in the state's history, the trans-Cascade district was placed further north, along Highway 2 at Stevens Pass. But plaintiffs' maps would add a second trans-Cascade district in all their maps, adding back in the Skamania County/Columbia Gorge trans-Cascade district, and in two of their maps, which, what I think is particularly egregious, would draw the 13th District -- which already is pretty long, it stretches from Moses Lake to

Snoqualmie Pass -- would have it go from Ephrata in the east to Enumclaw in the west. But it wouldn't even traverse I-90. It would traverse Highway 410 at Chinook Pass, which any camper, skier, or hiker knows is closed six months out of the year.

So we think that the court should take a little more careful look at this, hopefully with the assistance of the court-appointed expert.

Because plaintiffs' maps fall so far short on so many counts, the court shouldn't adopt any of them, even with some modest changes.

If the court does proceed with the remedy, it should not order a map that reduces the Hispanic population, nor should it change districts beyond what is absolutely necessary to address the affected area.

Consistent with Supreme Court precedence here, the enacted plan and state law regarding competitiveness of districts should be taken into account.

And one last point, Your Honor, which I'm happy to address further, if you're interested, but if there are going to be significant changes to other districts besides 14 or 15, and, sort of, by necessity, each of them will likely need to be changed, if the court proceeds, we think that new senate elections should be ordered in 2024 in both of those districts.

State law allows holdover senators, after they're districted out, to remain until their next election, but we

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

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

THE COURT: Okay. Thanks, Mr. Stokesbary.

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

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

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

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

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

Savage, would come out to Auburn, sit there, and look totally bored. We would convict the client, and then they'd just appeal and get a new trial in superior court. But it was a great place to learn a little bit about trial courts.

Okay. Thanks, Mr. Stokesbary.

Does the State want to speak, Mr. Hughes?

MR. HUGHES: I'm prepared to speak. I am also prepared to let plaintiffs go first. Whatever Your Honor prefers.

THE COURT: Okay. Let's hear from plaintiffs first, and then we'll hear from you, and if Mr. Smith wants to say something, too.

Ms. Waknin?

MS. WAKNIN: Good morning, Your Honor.

THE COURT: Good morning.

MS. WAKNIN: Your Honor, I'm also from New York, Queens, and so I talk fast. If I talk a little too fast, let me know.

THE COURT: I'm, actually, from Staten Island, which, technically, is part of New York City, but anybody from any of the other boroughs, it may as well be Auburn or somewhere.

MS. WAKNIN: Or, God forbid, New Jersey, where I'm also from.

Your Honor, plaintiffs have provided this court ten remedial mapping proposals. All of plaintiffs' plans remedy the

Section 2 violations, providing Latino voters and white voters in the Yakima Valley region with an opportunity to elect candidates of choice. All of plaintiffs' plans comply with the U.S. Constitution and with Washington's traditional redistricting principles, and all of plaintiffs' plans were drawn without the consideration of racial or political data by our map drawer.

Intervenor-Defendants' arguments don't address the central issue here at the remedial stage, and that issue is whether there are remedies before the court that completely remedy the prior dilution of minority voting screening and provide an equal opportunity for voters to elect candidates of choice.

There are ten plans before you that do, though. The Intervenor-Defendants have had the opportunity -- multiple opportunities to develop mapping plans that address their concerns, and they have not provided this court with a single plan that does so.

Indeed, they could have taken any of plaintiffs' five remedial proposals, or ten remedial proposals. We had suggested changes they've asked for and provided to this court, and they haven't done so.

I want to address, first, the argument regarding Hispanic voting population.

Under Section 2 jurisprudence, there's, actually, no racial demographic target that this court must hit for a remedial

district. What we're looking at at the remedial stage is whether or not there are different proposals for remedial districts that perform or provide an opportunity to elect candidates of choice.

Indeed, Intervenor-Defendants' argument regarding CVAP are interesting, considering before the Supreme Court, they told the court that the district court has ordered a super majority Hispanic district. They represent clients that say that the enacted plan is a racial gerrymander, and now come before this court and say that it's not enough Hispanic CVAP.

Regardless, there are plans before this court that has had full testimony on the record during the liability stage, Plaintiffs' Demonstrative 1 and 2, that provide higher CVAP in the remedial district.

Regardless, there's, actually, no dispute here regarding performance. Only one expert, Dr. Loren Collingwood, has provided this court with evidence of performance of the remedial district, and Dr. Collingwood shows that all ten plans, Remedial District LD 14 provides an equal opportunity to elect candidates of choice for Latino voters.

Next, I wanted to discuss Senator Torres.

As Intervenor-Defendants have conceded, it's, actually, methodologically impossible to demonstrate that Senator Torres is able to -- to use Senator Torres's race in a performance analysis. Indeed, if there was any way to do such a performance

analysis, their expert could have demonstrated such -- Dr. Trende could have demonstrated such. He has made no opinions, actually, on whether or not plaintiffs' maps provide an equal opportunity. Again, the only expert that's done so is Dr. Loren Collingwood, and I direct the court to his declaration on December 1st.

Further, Senator Torres's election is not probative in this case. As the court has heard testimony from Dr. Collingwood and Dr. Barreto, Senator Torres was not the candidate of choice for Hispanic voters, and in the 2022 election, the retirement of an incumbent, the underfunded, Latino-preferred, white, write-in candidate, and an abysmally low Latino turnout demonstrate that the 2022 election was not probative, and this court found that, actually, in your opinion.

I want to move on to the argument about too many changes. That's a central issue here raised by the Intervenor-Defendants.

Well, first, it's untrue that there are too many changes to the map. When courts are reviewing remedial proposals for redistricting, the metric is core retention. What core retention means is that the share of voters that were in their district in an enacted or a benchmark plan, how many of those voters actually stay in their district.

In all ten of plaintiffs' plans, the core retention rate is anywhere from 94 to 97.5 percent. And I'd like to direct the court to Dr. Oskooii's rebuttal report, which demonstrates that.

I believe it's Table 2, but don't quote me on that, Your Honor. It is in there.

So as you can see from high core retention rates, it's the case that there aren't too many changes. But even if it's the case that there are some changes to the map, and, Your Honor, there are, we're redistricting here, redistricting is like throwing a rock in a lake. Where the rock lands, there's going to be a lot of ripples, but further out, the ripples get smaller and smaller, until they dissipate.

And, here, the affected district is in Eastern Washington, LD 14. All of the surrounding districts are going to necessarily be changed, impacted, and that's not for any nefarious reason; it's because of population equalization. You have to comply with one person, one vote.

Indeed, all of plaintiffs' plans either equalize a population on par with the enacted plan and better than the enacted plan, and, again, I direct you to Dr. Oskooii's rebuttal report.

But because you're equalizing population, it's almost as if you're going in a clockwise manner, when you're redistricting, around the district, to grab different populations and to ensure there is equalization.

But even if there are too many changes, and there are not, again, the question here is whether there are proposals in front of you, Your Honor, that remedy the harm. That is the central

question at the remedial stage. It's not whether there are too many changes, it's not whether there is enough Hispanic CVAP, it's not whether there are any partisan changes.

And on that point, that is also similarly untrue. Plaintiffs' maps outside of the remedial district, LD 14, do not change the overall partisan makeup of the map.

I'd direct the court to Dr. Oskooii's rebuttal that shows that the affected districts that are not -- that are remedial districts, the overall partisan performance doesn't change. So there's no district, Your Honor, that's going from an electing Democrat district to electing Republicans. That's just not the case here, and, again, I'd direct the court to Dr. Oskooii's rebuttal report on the map.

But it is a political reality of Eastern Washington, that those districts surrounding the remedial district tend to elect Republican legislators, and if the affected district was in Seattle, it would be the case that all of the districts surrounding the affected district would be Democrats that are affected.

So on the point of partisanship, I'd also like to reiterate that Dr. Oskooii did not look at any partisan or political data when drawing their map.

There are other issues that are raised by Intervenor-Defendants, including trans-Cascade crossings or similar considerations regarding road passages. To the extent

that the court and a special master think that those concerns have merit, we welcome changes to the surrounding districts outside of LDs 14 and 15.

If this court would like to engage in its own map drawing, the standard is that the court must apply one person, one vote principles, abide by Washington traditional redistricting principles as delineated in RCW 44.05.090, which instructs this court to consider communities of interest.

Also, to look at the policy concerns by the State, which is judged by core retention. You can -- and do all these things while ensuring that there is a functional opportunity to elect candidates of choice, and you would do that through a reviewing performance. And if this court would like guidance, it would be instructive to the court, if it chooses so, to look at the *Singleton* remedial process, which is 2:21-UV-1291-AMM.

THE COURT: Counsel, I'm leaning towards Remedial Map 3A, and I'll give Mr. Stokesbary a chance to respond to that in his rebuttal. But, you know, consistent -- it seems to me that that one is consistent with traditional redistricting criteria. It seems to remedy the Voting Rights Act violation, even with a relatively low LCVAP. It keeps tribal lands together, although there's one issue there that was raised by Intervenors, and it avoids another cross-Cascade district.

Did you have any specific reaction to Remedial Map 3A, and do you understand what it is that the Intervenors think is

not -- the part of the Yakima Indian Reservation or Indian lands that didn't end up in it?

MS. WAKNIN: Your Honor, plaintiffs would support this map, adopting 3A.

With respect to the issue regarding off-reservation trust lands, I believe that the Intervenor-Defendants may be mistaken. The off-reservation trust lands are included in Map 3A, and Dr. Trende has not demonstrated that any off-reservation trust lands are not included in 3A.

THE COURT: Have you been using the Dave's Redistricting app to do your analysis?

MS. WAKNIN: I would have to consult with our experts, Your Honor.

THE COURT: Okay. Because it seems that different redistricting maps, or apps to draw maps, have access to different information, and that the Dave's may miss a little piece of the Indian lands that maybe the intervenors, people who paid for data, had access to. So I'll ask Mr. Stokesbary about that, too, but, okay.

MS. WAKNIN: Your Honor, from our understanding, Dr. Trende, their expert, has not demonstrated that there are -- there are off-reservation trust lands missing.

And to the extent that the special master has found some using a different application, we welcome, at least, input in whatever changes there may be.

THE COURT: Okay. Great.

MS. WAKNIN: Your Honor, I'm going to wrap up here.

I think we understand that plaintiffs' maps address the central issue in the remedial process. Any one of our proposals, Your Honor, would fully remedy the harm here and comply with the U.S. Constitution and traditional redistricting principles.

Thank you so much.

THE COURT: Thank you, counsel.

All right. Mr. Hughes, and then Mr. Smith.

MR. HUGHES: Good morning, Your Honor. Andrew Hughes on behalf of the State of Washington.

I thought I understood Your Honor to say that you first wanted to hear argument on the jurisdictional point.

THE COURT: Plaintiffs, I think, made an unfortunate argument that I didn't have jurisdiction, but I do. So I don't need to hear any more about that.

MR. HUGHES: Perfect. I'll save everyone some time, then.

So the bottom line here, then, as far as the remedial portion goes, from the State's perspective, is that the maps by plaintiffs and, presumably, any revisions or tweaks that the special master may offer, do appear to remedy the VRA violation, and that's what really matters, from the State's perspective.

So that being the case, the State does not take a position

on which map this court should adopt or whether any revisions are necessary or appropriate.

And there's just two points I want to make here by way of explanation.

So the first is, as we said in our briefing, Washington's Constitution and the redistricting statutes provide a single means for the State of Washington to propose a redistricting plan, and that's through the commission.

Here, the legislature opted not to reconvene the commission, and so for that reason, the State of Washington, my client, does not have its own plan to offer.

The second point I wanted to make, as Your Honor knows, as just came up, one key concern throughout the process has been respecting the wishes and sovereignty of the Yakima Nation, since the district boundaries here have the potential to affect the Nation's ability to exercise political power. And to that end, the State has reached out to the Nation. They've had opportunity, they've had time to weigh in, if they have concerns. They have not raised any, as of this point.

So at this point, then, the State defers to the court and the special master regarding the appropriate remedy.

THE COURT: Okay. Thanks very much.

And you also don't take a position on whether we should defer to 2026, or do it in 2024?

MR. HUGHES: As far as I understand, this is a new

request. We would oppose any deferring of an election. Plaintiffs have shown on the merits that the current maps dilute Hispanic voting power in the Yakima Valley, and, you know, a remedy deferred is a remedy denied with respect to the 2024 election.

THE COURT: Okay. Thank you.

All right. Mr. Smith?

MR. SMITH: Thank you, Your Honor. Carl Smith. Just very briefly.

The Secretary recognizes the court's primary focus is in adopting the remedial map that remedies the Voting Rights Act violations, complies with the Constitution, and satisfies relevant redistricting criteria.

To the extent the court identifies more than one map that equally satisfy all of those requirements, the Secretary's request would be that this court adopt the map that is least disruptive, in the sense that it affects the fewest counties and the fewest voters. But I do want to emphasize that is just a tie-breaker, where more than one map equally satisfy all criteria.

The only other piece I wanted to add was, there was a new request I heard this morning that I had not previously heard about holding a special election for state senate. We haven't had a chance to weigh in on that. I don't know if my client has a position on that. So if the court were inclined to consider

it, we'd request the opportunity to address the matter.

THE COURT: Okay. And do you have a position about 2024 versus delayed implementation?

MR. SMITH: The Secretary has no position on that, Your Honor.

THE COURT: Thank you.

Okay. Mr. Stokesbary, then, you can respond to the court's leaning towards Remedial Map 3A. Tell me about the Yakima Reservation or the trust lands and why you feel an evidentiary hearing is still important.

MR. STOKESBARY: Yeah. Thank you, Your Honor.

You know, I think the underlying issue the intervenors have throughout all this is that it's not possible to draw a district that both remedies the alleged dilution and also still comports with all the other legal requirements.

You ask about having a hearing. I think several arguments that plaintiffs made demonstrates exactly why we do need an evidentiary hearing.

The plaintiffs' expert says that there's not too many changes to the population outside the affected area. Intervenors-Defendant says there are too many changes. This is a factual dispute, disagreement between the experts that can be resolved through an evidentiary hearing.

Likewise, plaintiffs said that their expert believes that the maps do not change the overall partisan performance.

Plaintiffs' counsel even said that there isn't a district where the shift goes from a district that prefers Republicans to Democrats, or vice versa. Intervenors' expert says there is, in the 17th District in two of the maps, and that even outside from that change, there are other changes as well that are significant.

So there is a disagreement between the experts for which an evidentiary hearing could help the court determine which expert is most reliable.

The plaintiffs also argued that intervenors haven't presented any evidence showing that the new proposals would perform for Latino legislative candidate of choice in the 15th District, but this is not a burden for intervenors to disprove. It is a burden for plaintiffs to prove that there is redressability, and they haven't even attempted to do so.

Intervenors do think that it's possible to come up with some sort of model that could, at least, attempt to do that; to model results on factors, like demographics, education, race, partisan votes in other races where there are commonalities, like statewide races, other nonpartisan races; we absolutely do think it's possible to model and predict performance in nonoverlapping areas, and plaintiffs have not done that.

When it comes to the Yakima Reservation, Your Honor, the U.S. Census provides extremely detailed maps of tribal reservations that include not just reservation land but

off-reservation trust land, fee land owned by the tribe but not held in trust, and, in some cases, depending on the tribe's particular treaty rights, off-reservation usual and accustomed treaty land.

In the case of the Yakima Nation, we heard at trial that their request was not just for the reservation, not just for off-reservation trust land, not just their U&A, but also for their traditional hunting and fishing villages, which have significant tribal populations, and for that, Your Honor, I think we do need to hear directly from the Yakima Nation. I appreciate the State has reached out to them, but I'd encourage and request the court to reach out to the Yakima Nation and invite them to submit their position on the record.

But looking at the very detailed census map that includes U&A areas and other off-reservation trust land and fee land owned by the tribes, there are some parcels that we've identified that are not included in Legislative District 14, which, again, is another reason why we should have an evidentiary hearing, where we can compare maps and overlay the plaintiffs' map with the census map of where the Yakima parcels are.

And, lastly, Your Honor, with respect to Map 3A, I would just repeat the issues that we raised in our response to plaintiffs' maps and the issues I raised a minute ago. I think there remain to be additional problems. It still changes. Too

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

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

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

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

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

I'm happy to answer any other questions, Your Honor.

THE COURT: So in terms of how you got the information about the Yakima Indian other lands, was that using a different redistricting application than the Dave's that gave you access to other information?

MR. STOKESBARY: Correct, Your Honor. It was using the census map obtained from the U.S. Census Bureau and the shape file provided by plaintiffs --

THE COURT: Okay.

MR. STOKESBARY: -- that they submitted to the court and provided to other counsel.

THE COURT: I mean, I've come to realize that there's Dave's, which is free and available to everyone, but there's others you pay for that incorporate broader government records, land records, et cetera, et cetera. So I thought that might have been where there was disconnect.

Okay. Thank you, counsel.

MR. STOKESBARY: Thanks, Your Honor.

THE COURT: Anyone want to say anything else? I don't want to cut anyone off.

Okay. I don't think an evidentiary hearing is absolutely required, but I think I will schedule one for Friday, March 8th, at 1:30. We'll have the afternoon. Each side can present an expert, and we'll have -- but I think we should approach it with a presumption that the court is leaning towards Remedial Map 3A,

and so the testimony about the problems or issues with 3A should be a focal point of that evidentiary hearing.

I am going to deny the request for a stay. We're going to go forward on the remedial side of things.

Is that acceptable, counsel?

MS. WAKNIN: Your Honor, yes, except plaintiffs would like to ask if we could present both of our experts.

THE COURT: Oh, sure, that's fine. And you can present more than one expert, if you want to, also.

MS. WAKNIN: Would you like any prehearing disclosures?

THE COURT: Yes.

MS. WAKNIN: You would like prehearing disclosures?

THE COURT: Yes, please. The more stuff you can get me ahead of time, the fewer surprises at the evidentiary hearing, so much the better.

And keep in touch with each other, talk to each other about where is this piece of land on the reservation, and things like that.

I'll think about reaching out to the Yakima Nation to see if they want a more formal response.

MS. WAKNIN: Your Honor, plaintiffs would request that there is a schedule set for any expert disclosures before the hearing.

THE COURT: Yeah, we'll do one.

MS. WAKNIN: Okay. Thank you.

We just had a technology question. Can we bring technology before the court?

THE COURT: Technology? We love technology.

MS. WAKNIN: Thank you, Your Honor.

THE COURT: Mr. Stokesbary, any questions?

MR. STOKESBARY: Thank you for March 8th. That's the date my other job ends for the year.

Our request, you know, is that, since the court has, essentially, ruled against plaintiffs on their intent claim, which was the only claim to which the State was adverse, it's now clear the State and plaintiffs are aligned, so we'd request that time be split evenly between intervenors on one hand, and plaintiffs, the State, on the other.

THE COURT: That's fine.

MR. STOKESBARY: Thank you.

THE COURT: The State is not going to need a lot of time.

MR. HUGHES: No, we're not going to have any experts.

Can I just address two points?

THE COURT: Please.

MR. HUGHES: First, I don't need to say this, but I am.

March 25th is the deadline, so March 8th is fine, but that's the deadline, you know -- I trust the court is going to

hold that in mind.

The other point I want to make is -- I'll try to put this delicately -- at the end of this, plaintiffs are going to ask someone else to pay their legal fees, and it's not the State that's racking up fees at this point. So I hope Your Honor will consider that, down the road, when it comes time to think about fees and how those ought to be split up.

THE COURT: Okay.

MR. HUGHES: Thank you, Your Honor.

THE COURT: Mr. Smith, anything?

MR. SMITH: No.

THE COURT: Great. We will issue a scheduling order for the March 8th hearing and a brief order denying the motion for a stay.

LB, anything else?

THE LAW CLERK: No.

THE COURT: Thanks very much. We are adjourned.

(Proceedings concluded at 10:36 a.m.)

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN SOTO PALMER, et al.,

Plaintiffs,

v.

STEVEN HOBBS, et al.,

Defendants,

and

JOSE TREVINO, et al.,

Intervenor-Defendants.

NO. 3:22-cv-5035-RSL

STATEMENT BY INTERESTED PARTY YAKAMA NATION

Interested Party, the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation"), appreciates the opportunity to provide this statement in response to the Court's request for information relating to the remedial legislative district mapping. All proposed maps include the Yakama Reservation within a single district, so this response is narrowly tailored to address the Yakama Nation's Public Domain Allotments, Treaty Fishing Access Sites ("TFAS"), and TFAS shared-use sites in Klickitat County, Washington. These identified areas are displayed on the Exhibit A map, dated February 23, 2024, including tables with accompanying coordinates, section, township, range, description, and acreage. The Yakama Nation's usual and accustomed

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areas to exercise the rights reserved under the Treaty with the Yakamas of June 9, 1855 are ubiquitous in Klickitat County along the Columbia River and its tributary streams.[1] Enrolled members of the Yakama Nation reside on or within a proximal distance of many of the identified parcels and sites on a year-round basis or during fishing seasons from March – October.

Klickitat County contains the Yakama Nation's communities of interest located in the 14th Legislative District as adopted by the Washington State Legislature on February 8, 2022 that is subject to remedial Legislative District mapping.

DATED this 23rd day of February, 2024.

Respectfully submitted,

/s/ Ethan Jones
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Attorneys for the Confederated Tribes and Bands of the Yakama Nation

[1] *See* Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855, 12 Stat. 951, art. III, cl. 2.

EXHIBIT A

YAKAMA NATION PUBLIC DOMAIN TRUST LANDS

IN KLICKITAT COUNTY

(PAGINATED SEPERATELY)

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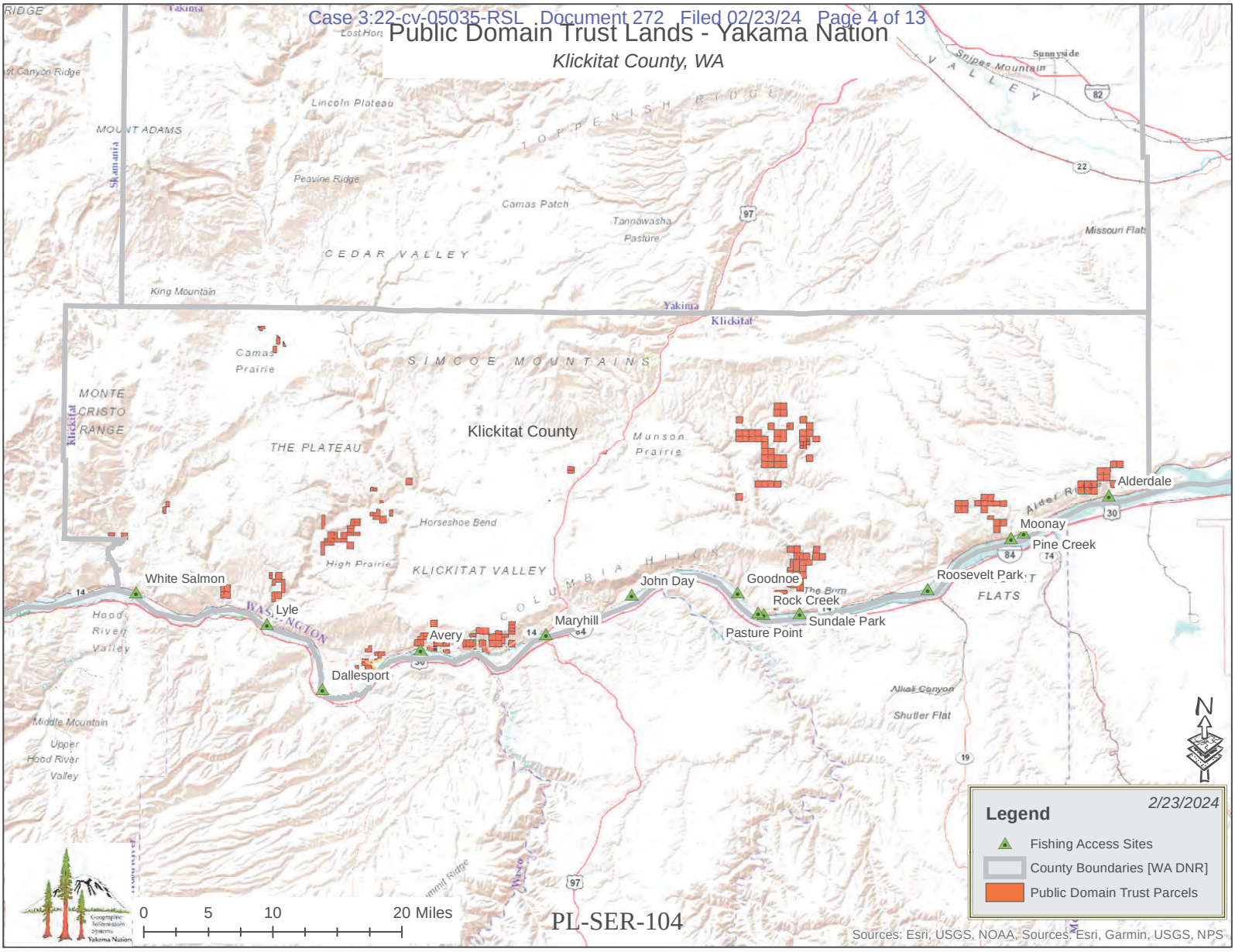
Public Domain Trust Lands - Yakama Nation
Klickitat County, WA
Klickitat County
Yakima
Klickitat
Lincoln Plateau
MOUNT ADAMS
Skamania
Peavine Ridge
Camas Patch
Tannawasha Pasture
CEDAR VALLEY
King Mountain
Camas Prairie
SIMCOE MOUNTAINS
MONTE CRISTO RANGE
THE PLATEAU
Munson Prairie
Horseshoe Bend
High Prairie
KLICKITAT VALLEY
White Salmon
Lyle
Dallesport
Avery
Maryhill
John Day
Goodnoe
Rock Creek
Pasture Point
Sundale Park
Roosevelt Park
FLATS
Alderdale
Moonay
Pine Creek
Sunnyside
Snipes Mountain
Missouri Flat
Alkali Canyon
Shutler Flat
Middle Mountain
Upper Hood River Valley
Hood River Valley
0 5 10 20 Miles
PL-SER-104
2/23/2024
Legend
Fishing Access Sites
County Boundaries [WA DNR]
Public Domain Trust Parcels
Sources: Esri, USGS, NOAA, Sources: Esri, Garmin, USGS, NPS

Public Domain Trust Lands – Yakama Nation, Klickitat County, WA (Feb. 23, 2024)

LST	Acres	PubDomainN	Lat	Long_	TwnRngSec	SEC	TWP	RGE
V-1009	0	Vancouver Allotments	45.66331961	-120.9759512	2-15.18	18	2	15
V-105	160	Vancouver Allotments	45.90684063	-120.505602	5-18.24	24	5	18
VH-0544	81	Vancouver Allotments	45.84159607	-121.1108222	4-14.7	7	4	14
V-121	160	Vancouver Allotments	45.93608353	-120.4545651	5-19.8	8	5	19
V-114	160	Vancouver Allotments	45.89951156	-120.515815	5-18.23	23	5	18
VH-4728	160	Vancouver Allotments	45.85059602	-121.0563451	4-14.9	9	4	14
V-136	160	Vancouver Allotments	45.87784535	-120.4548792	5-19.32	32	5	19
V-84	160	Vancouver Allotments	45.74616901	-120.4240618	3-19.15	15	3	19
V-87	160	Vancouver Allotments	45.76767798	-120.3928615	3-19.2	2	3	19
V-51	80	Vancouver Allotments	45.79095202	-121.139481	4-13.35	35	4	13
V-115	160	Vancouver Allotments	45.89966413	-120.5261642	5-18.23	23	5	18
V-113	160	Vancouver Allotments	45.90703121	-120.5260731	5-18.23	23	5	18
V-1015	0	Vancouver Allotments	45.83033884	-120.8310375	4-16.17	17	4	16
WW-14	0	Walla Walla Allotments	45.82643297	-120.1429487	4-21.14	14	4	21
VH-02070	80	Vancouver Allotments	45.7891901	-121.1732985	4-13.34	34	4	13
VH-5519	0	Vancouver Allotments	45.72838253	-121.3468905	3-12.19	19	3	12
MTV-182	160	Vancouver Allotments Mineral Rights	45.7180581	-120.4645311	3-19.29	29	3	19
V-179 & V179 A-F	0	Vancouver Allotments	45.66466999	-121.0111184	2-14.14	14	2	14
V-179 & V179 A-F	0	Vancouver Allotments	45.66444599	-121.01068	2-14.14	14	2	14
V-204	160	Vancouver Allotments	45.92141549	-120.5259668	5-18.14	14	5	18
V-112	160	Vancouver Allotments	45.90681218	-120.5157905	5-18.23	23	5	18
V-95	160	Vancouver Allotments	45.92158952	-120.4232988	5-19.15	15	5	19
V-119	160	Vancouver Allotments	45.91436519	-120.4749048	5-19.18	18	5	19
MV-120	0	Vancouver Allotments Mineral Rights	45.91623535	-120.4471321	5-19.16 NW1/4 SW1/4 Lot 3	16	5	19
V-122	160	Vancouver Allotments	45.92881268	-120.4545932	5-19.8	8	5	19
V-123	160	Vancouver Allotments	45.92886878	-120.4651933	5-19.8	8	5	19
MV-120	0	Vancouver Allotments Mineral Rights	45.91259445	-120.4471108	5-19.16 SW1/4 SW1/4 Lot 4	16	5	19
MV-120	0	Vancouver Allotments Mineral Rights	45.91445611	-120.4419455	5-19.16 E1/2 SW14	16	5	19
V-111	160	Vancouver Allotments	45.90711346	-120.4953033	5-18.24	24	5	18

V-118	80	Vancouver Allotments	45.89988548	-120.4851003	5-19.30	30	5	19
V-116	160	Vancouver Allotments	45.89953584	-120.5055192	5-18.24	24	5	18
V-110	160	Vancouver Allotments	45.89978407	-120.4953048	5-18.25	25	5	18
MV-120	160	Vancouver Allotments Mineral Rights	45.93615435	-120.4650086	5-19.8 NW 1/4	8	5	19
TV-100	160	Vancouver Allotments	45.89961949	-120.4023224	5-19.23	23	5	19
V-102	160	Vancouver Allotments	45.90704831	-120.4236951	5-19.22	22	5	19
V-141	160	Vancouver Allotments	45.89970163	-120.4237124	5-19.22	22	5	19
V-96	160	Vancouver Allotments	45.91444417	-120.4128868	5-19.15	15	5	19
MV-103	0	Vancouver Allotments Mineral Rights	45.89416164	-120.4259416	5-19.27 NW1/4 NW 1/4 Lot 3	27	5	19
MVH-243	0	Vancouver Allotments Mineral Rights	45.90144109	-120.4156327	5-19.22 NW1/4 SE1/4 Lot 5	22	0	0
MVH-243	0	Vancouver Allotments Mineral Rights	45.89775622	-120.4156519	5-19.22 NW1/4 SE1/4 Lot 5	22	0	0
1018 A-N & T-1018	0	Vancouver Allotments	45.88377	-120.7432532	5-16.25	25	5	16
VH-05684	0	Vancouver Allotments	45.90342822	-120.4549042	5-19.20	20	5	19
VH-5733 old VH-1014	0	Vancouver Allotments	45.89973425	-120.4650735	5-19.20	20	5	19
V-99	160	Vancouver Allotments	45.90695626	-120.4129582	5-19.22	22	5	19
V-101	160	Vancouver Allotments	45.87776718	-120.4129623	5-19.34	34	5	19
V-1020	0	Vancouver Allotments	45.88621436	-120.7387426	5-17.30	30	5	17
MV-103	0	Vancouver Allotments Mineral Rights	45.8905253	-120.4207963	5-19.27 SE1/4 NW1/4 Lot 5	27	5	19
VH-1013	160	Vancouver Allotments	45.90701623	-120.4647862	5-19.20	20	5	19
V-125	160	Vancouver Allotments	45.88518599	-120.4751054	5-19.30	30	5	19
V-128	160	Vancouver Allotments	45.87789865	-120.4751252	5-19.31	31	5	19
V-131	160	Vancouver Allotments	45.87788215	-120.4649092	5-19.32	32	5	19
TV-132	160	Vancouver Allotments Trust	45.87795894	-120.4853247	5-19.31	31	5	19
TWW-30	160	Walla Walla Allotments	45.84761432	-119.9142712	4-23.10	10	4	23
WW-32	160	Walla Walla Allotments	45.84768371	-119.9248848	4-23.10	10	4	23
V-109	160	Vancouver Allotments	45.89253293	-120.4851562	5-19.30	30	5	19
V-130	160	Vancouver Allotments	45.87064849	-120.46489	5-19.32	32	5	19
V-124	80	Vancouver Allotments	45.88522953	-120.4851801	5-19.30	30	5	19
WW-12	0	Walla Walla Allotments	45.82635658	-120.1326588	4-21.13	13	4	21
MWW-7	160	Walla Walla Allotments Mineral Rights	45.86938193	-119.924692	5-23.34	34	5	23

V-199	80	Vancouver Allotments	45.86245237	-120.7966334	4-16.13	13	4	16
VH-0576	0	Vancouver Allotments	45.84920977	-120.4956653	4-18.12	12	4	18
V-133	160	Vancouver Allotments	45.8706682	-120.4752939	5-19.31	31	5	19
V-82	0	Vancouver Allotments Mineral Rights	45.7616277	-120.4417722	3-19.9	9	3	19
V-142	160	Vancouver Allotments	45.74643378	-120.4341179	3-19.16	16	3	19
V-104	160	Vabcouver Allotments	45.84897353	-120.4646473	4-19.8	8	4	19
TV-146-A	0	Vancouver Allotments	45.74098035	-120.4339097	3-19.16	16	3	19
V-202	160	Vancouver Allotments	45.83486891	-120.5264185	4-18.14	14	4	18
TV-1019	3	Vancouver Allotments	45.88549059	-120.7388083	5-17.30	30	5	17
TWW-21	80	Walla Walla Allotments	45.86220299	-119.9353371	4-23.4	4	4	23
WW-28	0	Walla Walla Allotments	45.86937896	-119.9143997	5-23.34	34	5	23
TWW-33	0	Walla Walla Allotments	45.85502749	-119.9357792	4-23.4	4	4	23
V-126	160	Vancouver Allotments	45.87061771	-120.4547713	5-19.32	32	5	19
TV-127	80	Vancouver Allotments	45.87072857	-120.4856098	5-19.31	31	5	19
TV-1022	0	Vancouver Allotments	45.86605748	-120.7966469	4-16.3	3	4	16
MWW-22	160	Walla Walla Allotments Mineral Rights	45.86219373	-119.9457835	4-23.4	4	4	23
WW-29	0	Walla Walla Allotments	45.84761585	-119.9767913	4-23.7	7	4	23
WW-15	0	Walla Walla Allotments	45.81908882	-120.1327129	4-21.24	24	4	21
WW-3	0	Walla Walla Allotments	45.80439575	-120.1125436	4-22.30	30	4	22
MV-47-A	0	Vancouver Allotments Mineral Rights	45.82210595	-121.4437554	4-11.21 S1/2 NW1/4	21	4	11
V-140	160	Vancouver Allotments	45.84902866	-120.4750712	4-19.7	7	4	19
TWW-24	0	Walla Walla Allotments	45.85498896	-119.9460562	4-23.4	4	4	23
VH-0544	81	Vancouver Allotments	45.84163768	-121.1159021	4-13.12	12	4	13
V-139	80	Vancouver Allotments	45.84919903	-120.485317	4-19.7	7	4	19
TWW-25	0	Walla Walla Allotments	45.84758822	-119.9665421	4-23.8	8	4	23
TWW-23	0	Walla Walla Allotments	45.84758959	-119.956362	4-23.8	8	4	23
V-21	80	Vancouver Allotments	45.82698152	-121.100324	4-14.18	18	4	14
WW-10	0	Walla Walla Allotments	45.83357088	-120.1325748	4-21.13	13	4	21
WW-9	0	Walla Walla Allotments	45.83334648	-120.122363	4-21.13	13	4	21
WW-5	0	Walla Walla Allotments	45.81912867	-120.1743344	4-21.22	22	4	21

V-20	0	Vancouver Allotments	45.81416921	-121.0848791	2-14.11	20	4	14
MVH-303	0	Vancouver Allotments Mineral Rights	45.805547	-121.1394431	4-13.26 NE1/4 S1/2	26	0	0
MVH-303	0	Vancouver Allotments Mineral Rights	45.80188243	-121.1394701	4-13.26 SE1/4 N1/2	26	0	0
TWW-26	0	Walla Walla Allotments	45.84028465	-119.9665472	4-23.8	8	4	23
V-67	221	Vancouver Allotments	45.81377332	-121.1074443	4-14.19	19	4	14
MWW-31	160	Walla Walla Allotments Mineral Rights	45.84046856	-119.976893	4-23.7	7	4	23
WW-19	160	Walla Walla Allotments	45.8260781	-120.1019428	4-22.18	18	4	22
TWW20	160	Walla Walla Allotments	45.84010359	-119.9563579	4-23.8	8	4	23
VT-28	160	Vancouver Allotments	45.79825967	-121.1498315	4-13.26	26	4	13
TWW-7	0	Walla Walla Allotments	45.82643382	-120.1638594	4-21.15	15	4	21
TWW-8	0	Walla Walla Allotments	45.8264272	-120.174307	4-21.15	15	4	21
1003	0	Vancouver Allotments	45.65667167	-121.1067496	2-14.18	18	2	14
MVH-832	0	Vancouver Allotments Mineral Rights	45.78570385	-121.512481	3-10.35 SE1/4	35	3	10
V-160	80	Vancouver Allotments	45.66900119	-120.9395609	2-15.9	9	2	15
V-148	0	Vancouver Allotments	45.72562055	-120.4650324	3-19.20	20	3	19
MV-158	40	Vancouver Allotments Mineral Rights	45.67100541	-121.0129107	2-14.11	11	2	14
MV-158	40	Vancouver Allotments Mineral Rights	45.6675293	-121.012848	2-14.11	11	2	14
V-179 & V179 A-F	0	Vancouver Allotments	45.66534146	-121.0124611	2-14.14	14	2	14
V-38	0	Vancouver Allotments	45.64536253	-121.1133979	2-14.19	19	2	14
WW-11	0	Walla Walla Allotments	45.82621799	-120.1224943	4-21.13	13	4	21
WW-17	0	Walla Walla Allotments	45.82611566	-120.1122264	4-22.18	18	4	22
WW-4	0	Walla Walla Allotments	45.79699067	-120.1125574	4-22.30	30	4	22
VH-02070	80	Vancouver Allotments	45.78919972	-121.1784467	4-13.33	33	4	13
MV-47-A	0	Vancouver Allotments Mineral Rights	45.81487861	-121.4488819	4-11.20 E1/2 SE1/4	20	4	11
WW-16	80	Walla Walla Allotments	45.81005143	-120.1226713	4-21.24	24	4	21
WW-6	0	Walla Walla Allotments	45.8191356	-120.1639111	4-21.22	22	4	21
WW--1	160	Walla Walla Allotments	45.80427985	-120.1022065	4-22.30	30	4	22
V-67	221	Vancouver Allotments	45.81273383	-121.1161597	4-13.24	24	4	13
V-187	160	Vancouver Allotments	45.80386906	-121.1936349	4-13.28	28	4	13
V-70	160	Vancouver Allotments	45.80699145	-121.0977658	4-14.30	30	4	14

VH-572	160	Vancouver Allotments	45.77824508	-121.1498566	3-13.2	2	3	13
VH-3959	80	Vancouver Allotments	45.76856138	-120.4364587	3-19.4	4	3	19
V-195	160	Vancouver Allotments	45.73657442	-121.2683026	3-12.23	23	3	12
VH-954	0	Vancouver Allotments	45.78757909	-121.5333003	4-10.34	34	4	10
T-63	160	Vancouver Allotments	45.78912904	-121.1602196	4-13.34	34	4	13
V-68	80	Vancouver Allotments	45.80890404	-121.1083578	4-14.30	30	4	14
VT-62	160	Vancouver Allotments	45.78378652	-121.1654549	4-13.34	34	4	13
VH-1523	80	Vancouver Allotments	45.80369956	-121.1471484	4-13.26	26	4	13
VT-28	160	Vancouver Allotments	45.79457687	-121.1498313	4-13.35	35	4	13
TVH-6009	0	Vancouver Allotments	45.79094074	-121.1498552	4-13.35	35	4	13
V-69	0	Vancouver Allotments	45.78649428	-121.182309	4-13.33	33	4	13
V-80	160	Vancouver Allotments	45.75378473	-120.4433968	3-19.9	9	3	19
VH-0574	0	Vancouver Allotments	45.77598811	-120.4436349	3-19.4	4	3	19
V-77	160	Vancouver Allotments	45.7612429	-120.4344498	3-19.9	9	3	19
TV-66	160	Vancouver Allotments	45.78395188	-121.1888551	4-13.33	33	4	13
TV-66	160	Vancouver Allotments	45.78021207	-121.1837076	3-13.4	4	3	13
VH-498	160	Vancouver Allotments	45.7747765	-121.1940699	3-13.4	4	3	13
V-78	0	Vancouver Allotments	45.77546837	-120.4023834	3-19.2	2	3	19
MV-72	160	Vancouver Allotments Mineral Rights	45.74277216	-121.2643337	3-12.14	14	3	12
V-86	160	Vancouver Allotments	45.76792156	-120.4032003	3-19.2	2	3	19
VH-3960	0	Vancouver Allotments	45.77580759	-120.4333103	3-19.4	4	3	19
V-97	160	Vancouver Allotments	45.76839957	-120.4316389	3-19.4	4	3	19
V-147	80	Vancouver Allotments	45.73749897	-120.4338055	3-19.16	16	3	19
V-149	80	Vancouver Allotments	45.72737001	-120.4542668	3-19.20	20	3	19
V-98	0	Vancouver Allotments	45.76819457	-120.4187706	3-19.3	3	3	19
V-79	160	Vancouver Allotments	45.76093279	-120.4244485	3-19.10	10	3	19
V-83	160	Vancouver Allotments	45.76076509	-120.4141488	3-19.10	10	3	19
V-85	160	Vancouver Allotments	45.75360914	-120.424369	3-19.10	10	3	19
V-97	160	Vancouver Allotments	45.76831817	-120.4266859	3-19.3	3	3	19
V-81	160	Vancouver Allotments	45.75393855	-120.4344531	3-19.9	9	3	19

VH-976	80	Vancouver Allotments	45.72112456	-121.3545458	3-12.30	30	3	12
V-50	160	Vancouver Allotments	45.72111758	-121.2646138	3-12.26	26	3	12
TH-402	160	Vancouver Allotments	45.73185493	-121.25674	3-12.24	24	3	12
V-91	0	Vancouver Allotments	45.73433307	-120.4413907	3-19.21	21	3	19
V-91	0	Vancouver Allotments	45.73406801	-120.436287	3-19.21	21	3	19
1026	40	Vancouver Allotments	45.7446768	-121.277043	3-12.14	14	3	12
V-91	0	Vancouver Allotments	45.73460633	-120.4465118	3-19.21	21	3	19
V-90	0	Vancouver Allotments	45.73178047	-120.426193	3-19.22	22	3	19
VH-976	0	Vancouver Allotments	45.72843373	-121.3544977	3-12.19	19	3	12
VH-403	120	Vancouver Allotments	45.71934078	-121.2722515	3-12.26	26	3	12
V-143	160	Vancouver Allotments	45.74707875	-120.4441033	3-19.16	16	3	19
V-145	80	Vancouver Allotments	45.74169224	-120.4440808	3-19.16	16	3	19
V-89	0	Vancouver Allotments	45.73887752	-120.4260496	3-19.15	15	3	19
V-88	80	Vancouver Allotments	45.73198488	-120.4313794	3-19.21	21	3	19
V-144	78	Vancouver Allotments	45.73807859	-120.4440038	3-19.16	16	3	19
V-179 & V179 A-F	0	Vancouver Allotments	45.66284671	-121.0128866	2-14.14	14	2	14
V-38	0	Vancouver Allotments	45.6497161	-121.1067634	2-14.19	19	2	14
V-1006	0	Vancouver Allotments	45.71248282	-121.4585922	3-11.23	23	3	11
MV-170	80	Vancouver Allotments Mineral Rights	45.68477929	-120.8903141	2-15.2	2	2	15
MV-172	80	Vancouver Allotments Mineral Rights	45.68132539	-120.8903393	2-15.2	2	2	15
V-8	0	Vancouver Allotments	45.69117946	-121.015368	2-14.2	2	2	14
MTV-181	80	Vancouver Allotments Mineral Rights	45.7111595	-120.4670328	3-19.29	29	3	19
V-34	160	Vancouver Allotments	45.66882272	-120.8904506	2-15.11	11	2	15
V-192	80	Vancouver Allotments	45.66928708	-121.0436379	2-14.10	10	2	14
V-157	80	Vancouver Allotmants	45.66928147	-121.0384597	2-14.10	10	2	14
V-155	80	Vancouver Allotments	45.68318625	-120.9393737	2-15.4	4	2	15
T9001 (TR1)	84	Vancouver Allotments	45.63933186	-121.1116395	2-14.19	19	2	14
TV-64	40	Vancouver Allotments	45.63441855	-121.117181	2-13.25	25	2	13
V-30	120	Vancouver Allotments	45.66155078	-121.1191033	2-13.13	13	2	13
V-166	80	Vancouver Allotments	45.69196435	-120.890258	2-15.2	2	2	15

MV-151	160	Vancouver Allotments Mineral Rights	45.68317207	-120.9318312	2-15.4	4	2	15
MV-171	80				2-15.3	3	2	15
V-167	80	Vancouver Allotments	45.68830224	-120.8902877	2-15.2	2	2	15
V-191	80	Vancouver Allotments	45.67588864	-121.0352264	2-14.10	10	2	14
MV-169	0	Vancouver Allotments Mineral Rights	45.67783602	-120.9009428	2-15.11	11	2	15
V-32	0	Vancouver Allotments	45.67795892	-120.9526449	2-15.8	8	2	15
V-162	80	Vancouver Allotments	45.66909063	-120.9500776	2-15.8	8	2	15
V-159	80	Vancouver Allotments	45.66010177	-120.9948551	2-14.13	13	2	14
V-161	80	Vancouver Allotments	45.68321799	-120.9446249	2-15.4	4	2	15
V-190	80	Vancouver Allotments	45.66762371	-120.9949429	2-14.12	12	2	14
V-200	80	Vancouver Allotments	45.67836938	-121.0257303	2-14.11	11	2	14
MVH-5523	80	Vancouver Allotments Mineral Rights	45.66759298	-121.0050902	2-14.12	12	2	14
V-164	0	Vancouver Allotments	45.66929754	-121.0334194	2-14.10	10	2	14
TV-193	80	Vancouver Allotments	45.67467226	-121.0256858	2-14.11	11	2	14
V-154	80	Vancouver Allotments	45.66916888	-120.9604751	2-15.8	8	2	15
MV-186	160	Vancouver Allotments Mineral Rights	45.66890501	-120.9213254	2-15.10	10	2	15
V-174	160	Vancouver Allotments	45.67612266	-120.9214856	2-15.10	10	2	15
MVH-5534	140	Vancouver Allotments Mineral Rights	45.66179993	-120.9317848	2-15.16	16	2	15
V-153	80	Vancouver Allotments	45.66923855	-120.9659428	2-15.8	8	2	15
V-175	160	Vancouver Allotments	45.67606874	-120.9112577	2-15.10	10	2	15
MV-165	80	Vancouver Allotments	45.66895217	-120.9344041	2-15.9	9	2	15
MV-168	80	Vancouver Allotments Mineral Rights	45.67253653	-120.9036655	2-15.11	11	2	15
MV-163	80	Vancouver Allotments Mineral Rights	45.66915301	-120.9551753	2-15.8	8	2	15
V-179 & V179 A-F	0	Vancouver Allotments	45.66414671	-121.0117915	2-14.14	14	2	14
V-35	160	Vancouver Allotments	45.66396444	-120.958408	2-15.17	17	2	15
V-179 & V179 A-F	0	Vancouver Allotments	45.66437809	-121.0127457	2-14.14	14	2	14
MVH-5530	160	Vancouver Allotments Mineral Rights	45.66899343	-120.911125	2-15.10	10	2	15
MV-29	125	Vancouver Allotments Mineral Rights	45.65556008	-121.0997832	2-14.18	18	2	14
VH-852	160	Vancouver Homestead Allotments	45.64630567	-121.1223575	2-13.24	24	2	13
T-1010	0	Vancouver Allotments	45.66399614	-120.975698	2-15.18	18	2	15

V-179 & V179 A-F	0	Vancouver Allotments	45.66316357	-121.0110236	2-14.14	14	2	14
V-179 & V179 A-F	0	Vancouver Allotments	45.66501137	-121.0140557	2-14.14	14	2	14
V-179 & V179 A-F	0	Vancouver Allotments	45.66470499	-121.0135588	2-14.14	14	2	14
V-179 & V179 A-F	0	Vancouver Allotments	45.66128518	-121.0112186	2-14.14	14	2	14
V-179 & V179 A-F	0	Vancouver Allotments	45.6639684	-121.012729	2-14.14	14	2	14
V-179 & V179 A-F	0	Vancouver Allotments	45.66407431	-121.0108021	2-14.14	14	2	14
V-179 & V179 A-F	0	Vancouver Allotments	45.66392796	-121.0143156	2-14.14	14	2	14
MV-61	80	Vancouver Allotments Mineral Rights	45.63992675	-121.1380502	2-13.23	23	2	13
MV-185	160	Vancouver Allotments Mineral Rights	45.63984595	-121.1199236	2-13.24	24	2	13
MV-45	40	Vancouver Allotments Mineral Rights	45.63444904	-121.122318	2-13.25	25	2	13
V-179 & V179 A-F	0	Vancouver Allotments	45.66339863	-121.0125756	2-14.14	14	2	14
V-179 & V179 A-F	0	Vancouver Allotments	45.66439225	-121.0147783	2-14.14	14	2	14
V-179 & V179 A-F	0	Vancouver Allotments	45.66245521	-121.014371	2-14.14	14	2	14
V-179 & V179 A-F	0	Vancouver Allotments	45.6604507	-121.0105019	2-14.14	14	2	14
V-179 & V179 A-F	0	Vancouver Allotments	45.66124378	-121.0137333	2-14.14	14	2	14
V-179 & V179 A-F	0	Vancouver Allotments	45.66209586	-121.0140187	2-14.14	14	2	14
TV-194	121	Vancouver Allotments	45.66269613	-121.0202642	2-14.14	14	2	14
T-1011	160	Vancouver Allotments	45.64910653	-121.1274632	2-13.24	24	2	13
V- 1005	0	Vancouver Allotments	45.61603819	-121.1826913	2-13.33	33	2	33
MV-43	40	Vancouver Allotments Mineral Rights	45.63081097	-121.1222883	2-13.25	25	2	13
V-179 & V179 A-F	0	Vancouver Allotments	45.65999751	-121.0129392	2-14.14	14	2	14
VH-400	160	Vancouver Allotments	45.72103256	-121.3468671	3-12.30	30	3	12
MVH-243	0	Vancouver Allotments Mineral Rights	45.89415843	-120.4156403	5-19.27 NW1/4 NE1/4 Lot 1	27	0	0
MV-103	0	Vancouver Allotments Mineral Rights	45.89052976	-120.4259043	5-19.27 SW1/4 NW 1/4 Lot4	27	5	19
MVH-243	0	Vancouver Allotments Mineral Rights	45.8941657	-120.4208393	5-19.27 NE1/4 NW1/4 Lot 2	27	0	0
1025	38	Vancouver Allotments	45.74114746	-121.2769134	3-12.14	14	3	12

Fishing Access Sites – Yakama Nation, Klickitat County, WA (Feb. 23, 2024)

Name	County	X_Coord	Y_Coord
Alderdale	Klickitat	1785068.917	183553.501
Pine Creek	Klickitat	1750318.06	168288.1123
Moonay	Klickitat	1745047.945	166194.6872
Roosevelt Park	Klickitat	1710984.208	145137.912
Sundale Park	Klickitat	1658549.024	135306.0252
Rock Creek	Klickitat	1643850.159	134807.4169
Pasture Point	Klickitat	1641401.135	135597.9745
Goodnoe	Klickitat	1633214.876	143704.2192
John Day	Klickitat	1589717.364	142739.9263
Maryhill	Klickitat	1554649.726	126645.9937
Avery	Klickitat	1503344.649	120530.7679
Dallesport	Klickitat	1463206.266	104213.9736
Lyle	Klickitat	1440409.125	130895.3218
White Salmon	Klickitat	1386879.115	143807.8443

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' SUPPLEMENTAL FILING IDENTIFYING YAKAMA NATION LANDS FILED AT THE COURT'S REQUEST

On February 9, 2024, the Parties participated in a hearing related to the Court's ongoing process of determining a remedial State Legislative map to address its prior finding of Hispanic vote dilution in the Yakima Valley. At this hearing, the Court stated that the Parties should operate under the presumption that it will adopt Plaintiffs' proposed Remedial Map 3A. Following the hearing, the Court issued an Order scheduling an evidentiary hearing for the remedial process to be held on March 8, 2024. *See* Dtk. # 266. The Court also ordered that the "Intervenor-Defendants shall identify the usual and accustomed hunting and fishing grounds of the Yakama Nation, off-reservation trust parcels, and/or traditional family homestead that they maintain are not included in LD-14 in Remedial Map 3A." *Id.* The Court further ordered the Intervenors to disclose "the data set from which the information is gleaned, screenshots of a map showing the excluded areas, and

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the number of people impacted." *Id.* What follows is Intervenors response to the Court's order discussed above.

REQUESTED INFORMATION

A. Introduction

After having retained a Special Master for the purpose of crafting a remedial map, and after the Plaintiffs created and submitted the proposed remedial maps, the Court now orders Intervenors to show the remedial map drawers where the lines should be placed to incorporate the Yakama Nation in the manner they have repeatedly and publicly requested. As disclosed by the State following the remedial oral argument, the Yakama Nation opposes all of the maps proposed by Plaintiffs as "[n]one of [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." Letter from Gerald Lewis, Chairman, Yakima Nation Tribal Council, to Bob Ferguson, Attorney General of Washington (Dec. 22, 2023) (Ex. A). In responding to the State's blind support of Plaintiffs' proposed remedial maps, the Yakama Nation added: "it is improper for Washington State's preferred solution to swap the injury through revisions that dilute the Yakama voting population with the 14th Legislative District." *Id.*

During the original map-drawing process, and during discovery and trial in this matter, the members of the Commission all stated that one of their priorities was a map that gave the Yakama Nation a single district that encompassed all of the land they felt should be included therein. *See, e.g.*, Trial Tr. 486:5-23 (Fain: explaining why he prioritized tribal government interests, including Yakama Nation's "desire . . . to be consolidated" in a single legislative district); Trial Tr. 714:25-715:16 (Graves: explaining that Commission's final "framework" agreement reflected the Yakama Nation's "prefer[ence] to have both their reservation and their traditional hunting and fishing lands[] be contained within one Legislative District"). The Yakama Nation had been very clear with the Commission about what their tribe wanted. Under the Commission's first-ever formal tribal consultation process, the Yakama Nation made it abundantly clear—through numerous

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letters, meetings, and presentations, all of which included maps and geographical descriptions—how they viewed the legislative district boundaries should be drawn around their lands. *See* Dkt. ## 252-4, 252-5, 252-6. All of these maps and presentations were produce to Plaintiffs during discovery and are part of the record before the Court (organized and attached as exhibits in a recent filing by Intervenors). *See id.* Despite the ample evidence on the record that shows *exactly* what the Yakama Nation wanted, Plaintiffs are still unable to produce a remedial map that "represent[s] the Yakama Nation's interests to the same degree as the current 14th Legislative District," Ex. A at 2—one that "is consistent with the Yakama Reservation boundary; incorporates Yakama members living in established tribal communities off-Reservation[1] and on federal trust property along the Columbia River; includes the Yakama Nation's significant human service areas and public safety districts adjacent to the Reservation; and includes critical natural resource management areas for the protection of adjacent forests and rivers," Letter from Delano Saluskin, Chairman, Yakama Nation Tribal Council, to Sarah Augustine, Chair, Washington State Redistricting Commission (Nov. 4, 2021) (Dkt. # 252-6 at 7-8). The Commission had little trouble understanding the Yakama's political and cultural priorities and incorporating those priorities into the Enacted Plan, so it is troubling that Plaintiffs and the State have been unable to do the same, or to survey public records to answer the questions the Court now places before Intervenors.

B. Reservation Lands

This data is publicly available via the U.S. Census Bureau and is provided in the files transmitted to the Court.

C. Usual and Accustomed Hunting and Fishing Grounds, Off-Reservation Trust Parcels, and Traditional Family Homestead Lands

As stated above, the Yakama Nation, throughout the map drawing process, provided numerous resources to assist the map drawers in crafting an appropriate district that encompassed

[1] In an earlier letter to the Commission, the Yakama Nation wrote that "many enrolled members reside on off-Reservation trust parcels at traditional family homesteads, or in communities near the usual and accustom[ed] fishing sites along the Columbia River." Letter from Delano Saluskin, Chairman, Yakama Nation Tribal Council, to Sarah Augustine, Chair, Washington State Redistricting Commission (Jun. 3, 2021) (Dkt. # 252-4 at 5).

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all of the lands that the tribe hoped to be contained in a single legislative district. *See* Dkt. ## 252-4, 252-5, 252-6.

Except for off-reservation trust lands (which are relatively easy to track, because they are held in trust by the United States), there are not always clearly delineated maps or lists of exact parcels that contain all culturally-important off-reservation lands. *See supra* note 1 (identifying the kinds of off-reservation areas important to the Yakama Nation). "To determine the existence of original Indian title to land, and the right to hunt and fish following from that title, courts have generally required a showing of actual use and occupancy over an extended period of time." *Washington v. Buchanan*, 978 P.2d 1070, 1079 (Wash. 1999). In fact, courts have not "provide[d] a formal mechanism to evaluate and determine traditional hunting areas." Washington State Department of Fish & Wildlife, Treaty History With the Northwest Tribes, https://wdfw.wa.gov/hunting/management/tribal/history (last visited Feb. 15, 2024). As such, the best source to begin looking for an understanding of these off-reservation lands is to defer to the Yakama Nation itself.

In fact, the Supreme Court has considered the 1855 treaty between the United States and the Yakama Nation five times, "and each time it has stressed that the language of the treaty should be understood as bearing the meaning that the Yakamas understood it to have in 1855." *Wash. State Dep't of Licensing v. Cougar Den, Inc.*, 139 S. Ct. 1000, 1011 (2019) (citing *United States v. Winans*, 198 U.S. 371, 380-81 (1905), *Seufert Brothers Co. v. United States*, 249 U.S. 194, 196-98 (1919), *Tulee v. Washington*, 315 U.S. 681, 683-85 (1942), *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 677-78 (1979); *see also Choctaw Nation v. Oklahoma*, 397 U.S. 620, 630-31 ("The Indian Nations did not seek out the United States and agree upon an exchange of lands in an arm's-length transaction. Rather, treaties were imposed upon them and they had no choice but to consent. As a consequence, this Court has often held that treaties with the Indians must be interpreted as they would have understood them.").

The Yakama's 1855 treaty ceded land extending westward "down the Columbia River to midway between the mouths of White Salmon and Wind Rivers." Treaty of 1855 With the

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Yakama, Art. 1. Under the Enacted Plan, LD-14 extends down the Columbia to the White Salmon River (which serves as the Klickitat-Skamania county line). Yet under Plaintiffs' proposal 3A, LD-14 only extends downriver just past Lyle, well short of White Salmon.

In another example of the shortcomings of map 3A "Husum was a historic Yakama Nation fishing village, and the Yakama Nation is highly involved in the protection and restoration of the river." Wash. Dep't of Ecology, Quality Assurance Project Plan: White Salmon River Watershed Bacteria Assessment, at 7 (https://apps.ecology.wa.gov/publications/documents/2303103.pdf). The community of Husum is located in LD-14 under the Enacted Plan, but would be shifted to LD-17, separate from the rest of the Yakama Nation, under Plaintiffs' proposal 3A.

In its various letters and presentations to the Commission, the Secretary of State and the Attorney General of Washington, the Yakama Nation:

- Wrote that "many enrolled members reside on off-Reservation trust parcels, at traditional family homesteads, or in communities near the usual and accustomed fishing sites *along the Columbia River* . . . . [there is also] indigenous voting population located *south of the Yakama Reservation in Klickitat and Skamania Counties*." Dkt. # 252-4 at 5.
- Presented historical and proposed legislative district maps to the Commission on August 4, 2021. *See* Dkt. # 252-5 at 5, 7, 21.
- Supported Commissioner Graves's proposed legislative map because it "incorporates Yakama members living in established tribal communities off-Reservation and on federal trust property along the Columbia River; includes the Yakama Nation's significant human service areas and public safety districts adjacent to the Reservation; and includes critical natural resource management areas for the protection of adjacent forests and rivers." Dkt. # 252-6 at 7-8.

Using the descriptions, comments, and maps provided by the Yakama Nation, Intervenors have attempted to provide the information requested by the Court. The information will be included in data files transmitted to the Court via email concurrent with this filing.

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CONCLUSION

Based on recent comments from the Yakama Nation, it is clear that the tribe's preference is to simply maintain the current LD-14 District. None of Plaintiffs' proposed remedial maps provide the Yakama Nation with what it has requested (which is what it negotiated with the Commission as sovereigns, pursuant to the Commission's tribal consultation policy), including Map 3A. Now that Intervenors are aware of the Yakama Nation's position on the proposed remedial maps through the letter recently provided by the State, *see* Ex. A, Intervenors intend to put forth a proposed map that will maintain Yakama Nation's position in the enacted LD-14 and provide a majority-minority district for Latinos in the Yakama Valley that provides the opportunity to regularly elect Democratic candidates. This map will be forthcoming with the remedial expert filings and disclosures pursuant to the Order of the Court of February 9, 2024. *See* Dkt. # 266.

Here, there are few ways to create a map that contains a majority-minority Latino CVAP that performs for Democratic-aligned candidates and gives the Yakama Nation everything they requested. The Commission already dedicated several months' worth of work to creating such a map—to completely disregard the Commission's work would be a travesty.

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DATED this 15th day of February, 2024.

Respectfully submitted,

s/ Andrew R. Stokesbary

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Counsel for Intervenor-Defendants

I certify that this memorandum contains 1,775 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 February, 2024.

Respectfully submitted,

s/ Andrew R. Stokesbary
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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN SOTO PALMER, *et al.*,

Plaintiffs,

v.

STEVEN HOBBS, *et al.*,

Defendants,

and

JOSE TREVINO, *et al.*,

Intervenor-Defendants.

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

ORDER REGARDING SENATOR TORRES' MOTION TO INTERVENE

This matter comes before the Court on the "Motion to Intervene of Senator Nikki Torres." Dkt. # 253. Federal Rule of Civil Procedure 24(b) provides that, *"[o]n timely motion*, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact" (emphasis added).

> In determining whether a motion for intervention is timely, a court must consider three factors: (1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay. In measuring any delay in seeking intervention, the inquiry looks to when the intervenor first became aware that its interests would no longer be adequately protected by the parties.

San Jose Mercury News, Inc. v. U.S. Dist. Ct.--N. Dist. (San Jose), 187 F.3d 1096, 1100–01 (9th Cir. 1999) (internal citations and quotation marks omitted). *See also Callahan v. Brookdale Senior Living Communities, Inc.*, 42 F.4th 1013, 1018 (9th Cir. 2022)).

Senator Torres filed her motion to intervene on December 22, 2023, almost two years after this case was filed, more than a year after she was elected to represent Legislative District 15 ("LD 15"), more than seven months after the Court allowed another elected official from a neighboring legislative district to intervene, more than four months after judgment was entered in favor of plaintiffs, and two-and-a-half months after the Court established a schedule for presenting alternative remedial proposals. The remedial process was well underway by December 22nd: plaintiffs had already submitted their proposed remedial maps, the Court had appointed an expert to assist in the evaluation of the proposals, and the deadline for responding to the remedial proposals had arrived. By the time the motion was ready for consideration, the remedial briefing was complete. Senator Torres argues that the motion was nevertheless timely because, until the State and Intervenors declined to submit their own remedial maps on December 1, 2024, she was unaware that her interests would not be adequately protected by the existing parties.

Senator Torres did not seek to intervene so that she could present an alternative remedial map, however. She is seemingly content with simply responding to plaintiffs' remedial proposals, largely reiterating the arguments raised by the Intervenors and their expert. *Compare* Dkt. # 251 and # 252 with Dkt. # 253-1. She makes no attempt to show

that the Intervenors' response was somehow inadequate, instead noting that, faced with the likelihood that one of plaintiffs' remedial maps would be chosen by the Court, she wanted "to speak on her own behalf." Dkt. # 253-1 at 2. But the issue is whether she timely sought to accomplish that goal. The Senator had notice of this lawsuit no later than the time she was served with a subpoena in November 2022. She knew or should have known at that time that plaintiffs were seeking to alter the boundaries of the district that had elected her, and yet she was content until very recently to allow other parties to represent her interests. Having failed to put forth her own a remedial proposal and offering no new criticisms of plaintiffs' proposals, Senator Torres seems to be arguing that the boundaries of LD 15 should remain unchanged because she has a legally protectable interest in her existing cadre of voters and/or in avoiding a more difficult reelection campaign.[1] Those arguments should have been made long ago.

In the circumstances presented here, the late stage of this proceeding, the length of the delay in seeking to make herself heard, and the lack of justification for the delay militate against granting leave to intervene. Although plaintiffs have not shown that they would be prejudiced by the intervention, recognizing, as they do, that Senator Torres' arguments are virtually identical to those raised by the Intervenors, the motion for leave to

[1] The Court previously found that, under Washington law, an elected official has "no right or protectable interest in any particular redistricting plan or boundary lines. The legislative district map must be redrawn after each decennial census: change is part of the process." Dkt. # 69 at 4.

intervene was not timely filed and is therefore DENIED. The Court will, however, consider Senator Torres' submission, Dkt. # 253-1, when selecting a remedy in this case.

Dated this 22nd day of January, 2024.

Robert S. Lasnik
United States District Judge

EXHIBIT 1

January 5, 2024 Rebuttal Expert Report
of Dr. Oskooii

Rebuttal Expert Report Submitted on Behalf of Plaintiffs

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

Kassra AR Oskooii, Ph.D.

University of Delaware

January 5, 2024

I. Background and Qualifications

1. I, Kassra AR Oskooii, am over 18 years of age and am competent to testify.

2. My background and qualifications are set forth in my expert report dated and submitted on December 1, 2023.

3. I have reviewed the report of Dr. Sean Trende and now offer this rebuttal.

II. Executive Summary

4. There are fundamental problems with Dr. Trende's report and analysis.

5. First, Dr. Trende draws incorrect conclusions about the Remedial Maps, including the remedial district Legislative District 14 ("LD 14"), because he does not consider Washington's redistricting criteria. In fact, at no point throughout his lengthy report does he discuss what principles mapmakers must follow in the State of Washington.

6. Second, Dr. Trende's claims about the nature and magnitude of changes to surrounding districts are misleading and, at times, wholly inaccurate. His characterization of changes to surrounding districts, which were necessary to draw a remedial district while respecting Washington's and traditional redistricting criteria, disregards the realities of redistricting, especially in sparsely populated areas.

7. Third, Dr. Trende's own visuals and data belie his suggestion that LD 14 across the remedial plans was drawn to achieve a particular racial target. In fact, I did not consider any racial demographic or political data in drawing the Remedial Maps. Instead, I drew a district that unites the communities in East Yakima, the Lower Yakima Valley, and Pasco that the court identified as forming a community of interest, while respecting other redistricting criteria.

8. Fourth, Dr. Trende's suggestion that the Remedial Maps make changes to surrounding districts that favor Republicans more than Democrats is simply incorrect. Again, I did not consider any partisan or electoral data in drawing these maps. And, Dr. Trende's own data points show that the incidental changes in partisan composition of the districts surrounding LDs 14 and 15 were very slight and not substantial enough to change the partisan performance of those districts. Prevailing measures of partisan bias (the efficiency gap and declination scores) further confirm that the Remedial Maps do not meaningfully shift the partisan balance as compared to the Enacted Plan. The fact that the boundaries of more Republican performing districts were impacted than Democratic performing districts in the Remedial Maps is simply a function of geography: the region where the VRA violation occurred happens to have many more Republican districts than Democratic districts. Naturally, then, the boundaries of Republican districts will be impacted as a consequence of remedying the violation in that region. However, any alterations to the surrounding districts did not substantively diminish Republican performance in those districts.

9. Fifth, I have provided five new Remedial Maps 1A-5A that address, to the extent possible, the incumbent displacements in Remedial Maps 1-5 identified by Dr. Trende and Mr. Pharris at the Secretary of State's office.

10. Finally, Intervenors claim that LD 14 in Remedial Maps 3 and 4 exclude some Yakama Nation off-Reservation trust land but provide no data or boundary files to support their claim. I have verified that based on tribal land boundaries provided by the U.S. Census

and available on Dave's Redistricting App,[1] LD 14 in Maps 3 and 4 include the Yakama Nation's off-Reservation trust land.

III. Dr. Trende's Analysis Lacks a Serious Consideration of Washington's Redistricting Criteria

11. In evaluating the Remedial Maps, Dr. Trende's report does not address the extent to which districts follow the boundaries of political subdivisions and communities of interest, avoid splitting counties, municipalities, and precincts, and are comprised of traversable territory in light of natural boundaries, waterways, and islands in Washington State.

12. As I emphasized in my report, and which Dr. Trende's report overlooks, my decisions were guided by Washington State's redistricting criteria, including that districts shall have a population as nearly equal as is practicable and should, insofar as practical: follow boundaries of political subdivisions and communities of interest; minimize the number of county, municipality, and precinct splits; and be drawn with convenient, contiguous, and compact territory.

13. In accordance with Washington's requirement that no district be drawn purposely to favor or discriminate against any political party or group, I did **not** consider, view, or otherwise consult any racial/ethnic demographic data, election results, or any partisan metrics while drawing districts. To the extent practicable and based solely on publicly available data, I also considered limiting the pairing of incumbents.

14. In general, I also tried to minimize changes to other districts in the Enacted Plan, but with a recognition that altering other districts is an unavoidable byproduct of remedying

[1] For more details, see here: https://medium.com/dra-2020/tribal-lands-on-daves-redistricting-d3dbbc7ed840.

the violation of federal law. Thus, while some comparison to the Enacted Plan can provide context, overly focusing on it as Dr. Trende does is misplaced.

IV. The Remedial Maps Minimize Changes to Surrounding Districts and Such Changes Are a Natural Consequence of Complying with Redistricting Criteria

15. Dr. Trende makes false claims about the extent of changes to district boundaries across the state. For example, on page 9 of his report he writes: "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." Similar unsubstantiated claims are made on pages 14, 45, and 49. First, *precincts* are the building blocks of the changes I implemented, with blocks only being selected in rare cases of having to split precincts. Second, various maps in Dr. Trende's report, such as Figures 3, 6, 21, 24, and 31, which aim to highlight affected areas of the state, directly contradict his assertions regarding the number of counties impacted. Third, as Mr. Nicholas Pharris of the Secretary of State's office correctly points out, the Remedial Maps affected anywhere between 3 to 13 (nowhere near 28) counties depending on the map in question (see paragraph 7, page 2 of Nicholas Pharris Declaration), which were the byproduct of abiding by and balancing traditional redistricting criteria.

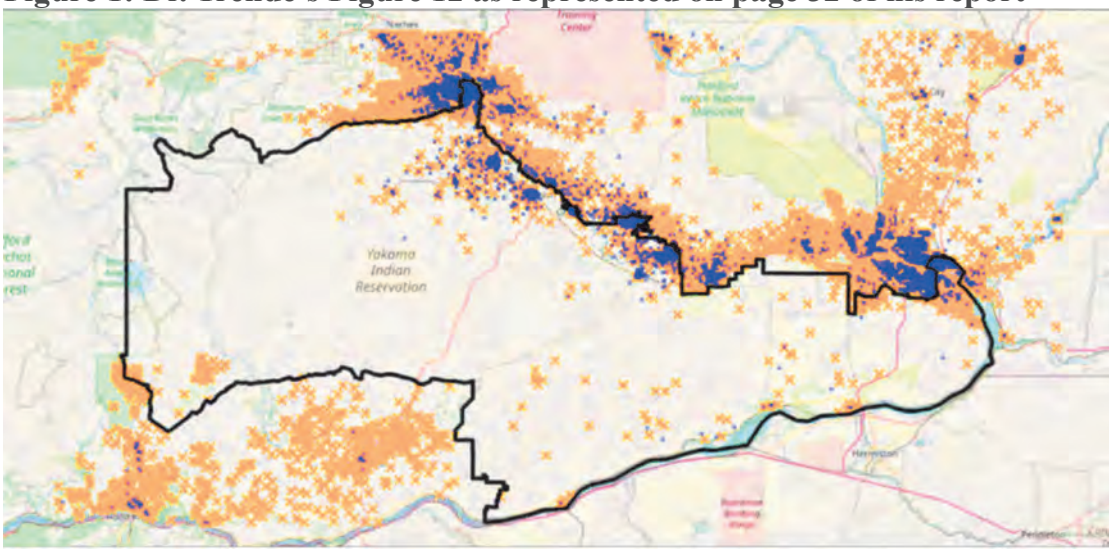
16. Furthermore, Dr. Trende describes the changes made to the districts surrounding the remedial district (LD 14) as if they are somehow unexpected or inconsistent with the realities of redistricting.

17. It is well understood that altering the boundary of one district will inevitably impact surrounding districts due to the necessity of maintaining equal population distribution. This is particularly true in regions, like Central and Eastern Washington, which contain wide swathes of sparsely populated land. Even counties that have a population size that

exceeds the ideal population of a legislative district (157,251), have large unpopulated areas.

18. This principle is perhaps best illustrated by Dr. Trende's own visuals, such as his Figure 12 on page 32, pasted below. As can be seen, many areas within Yakima County, which has an adjusted population of 257,518, are, as Dr. Trende put it, "largely uninhabited."

Figure 1: Dr. Trende's Figure 12 as represented on page 32 of his report



19. Furthermore, many counties in Central and Eastern Washington have an adjusted population (2020 U.S. Census) that is far below the target population of a single legislative district, while others are vastly overpopulated, as illustrated in Table 1.

Table 1: 2020 US Census Adjusted Population of Counties (compared to ideal legislative district population of 157,251)

County	Adjusted Population
Garfield	2,288
Columbia	3,964
Skamania	12,050
Adams	20,638
Asotin	22,357
Klickitat	22,789
Douglas	43,002
Kittitas	44,393
Whitman	47,991
Walla Walla	60,706
Chelan	79,229
Lewis	82,337
Franklin	94,918
Grant	99,342
Cowlitz	111,152
Benton	207,278
Yakima	257,518
Clark	503,829
Spokane	538,615
Pierce	922,415
King	2,272,501

20. As such, redrawing legislative maps to equalize district populations is not a simple process. When one district boundary is altered, that district either gains or loses population, which directly impacts adjacent districts, which will also either gain or lose population. This in turn will cause ripple effects throughout the map, which naturally lowers the overall core retention of the comparison plan.

21. None of this is acknowledged or considered by Dr. Trende. However, mapmakers and political scientists with expertise in this subject matter know very well that even small changes to existing district boundaries can cause many changes throughout the map. Political scientist and redistricting expert Dr. Kenneth Mayer described it elegantly:

> Redrawing a statewide legislative map to equalize populations is not a straightforward process. When an existing district is underpopulated, map drawers must add populations from surrounding districts. Unless adjacent districts are overpopulated by the same amount, the process requires surrounding districts to expand outward as well. If the surrounding districts are also underpopulated, they become even more so after part of their populations are moved to the first district, and they must be modified to bring in population from other districts, and so on. As a rule, these changes propagate outward (analogous to a ripple spreading out when a rock is tossed into a lake) until an underpopulated region can be balanced with an overpopulated region or the effects dampen as population effects are spread out among more and more districts.
>
> These changes can have large effects that propagate throughout a map, particularly if map drawers are taking other factors into account, such as keeping municipalities together or drawing compact districts.
>
> "Ripple" effects from changes can be severe. Even a small shift in one district can result in the need for dramatic changes in other districts if there are strict population constraints (as there are for congressional districting) or if other constraints are in place such as preserving municipal and county boundaries, or avoiding vote dilution issues (Miller and Grofman 2018, 29).
>
> - *Johnson, et al., v. WEC, et al.*, No. 2021AP1450-OA (Wis. Dec. 15, 2021), Appendix to Merits Brief of Intervenor-Petitioners at 121 (Expert Report of Dr. Kenneth R. Mayer).

22. A mapmaker not only needs to pay critical attention to population disparities across the districts, but, where feasible, also avoid splitting municipalities, communities of interest, and precincts, and address issues of road connectivity to ensure that constituents and representatives can traverse from one side of the district to the other. This process becomes particularly challenging in areas where municipalities are irregularly shaped or when precincts are large and oddly shaped, as is often the case in areas near the Cascades and throughout Central and Eastern Washington. These factors will expectedly require boundary changes that extend beyond the borders of LD 14.

23. Additionally, Dr. Trende's tables showing the number of people "moved" between districts (on pages 9, 14, 45, and 49) are misleading, inaccurate, and use inappropriate metrics to assess core population retention.

24. Dr. Trende's method is flawed in part because he reports absolute numbers, which fail to account for the magnitude of population shifts as a percent of the total population of each district (approx. 157,251). While some of the districts surrounding LD 14 must, of course, be reworked to accommodate drawing a new LD 14 that remedies the VRA violation, the core retention metrics I present below show that the Remedial Maps, as a whole, retained the population of districts in the Enacted Plan at very high rates.

25. In addition, Dr. Trende's account of people "moved" between districts misunderstands the purpose of assessing core retention, which is to see the extent to which populations in a district in the Enacted Plan were kept together in *a* district, regardless of whether that district's label number has changed. Dr. Trende's reported "movements" of people between LD 14 and 15 misses this point and fails to account for the fact that LD 14 and 15 were relabeled in the Remedial Maps. For example, he reports that in Remedial Map 1, 97,346 people from Enacted LD 15 (who comprised 60% of that district) were "moved" to Remedial LD 14 (in which they still comprise 62% of the district). This means that Remedial LD 14 in Map 1 largely *retains* the core of Enacted District 15, and the reported "movement" of population was simply the result of renumbering the district.

26. Table 2 presents core population retention scores for each Remedial Map, which is reported as the percentage of a pre-existing (e.g., enacted) district's population that is kept intact in a new district (e.g. remedial).

Table 2: Core Population Retention Percentages, Remedial Maps 1-5

District	Remedial Map 1	Remedial Map 2	Remedial Map 3	Remedial Map 4	Remedial Map 5
1	100.0%	100.0%	100.0%	100.0%	100.0%
2	86.6%	86.6%	90.1%	90.1%	100.0%
3	100.0%	100.0%	100.0%	100.0%	100.0%
4	100.0%	100.0%	100.0%	100.0%	100.0%
5	86.7%	100.0%	90.1%	100.0%	100.0%
6	100.0%	100.0%	100.0%	100.0%	100.0%
7	86.7%	100.0%	90.1%	100.0%	100.0%
8	61.9%	61.9%	59.3%	59.3%	100.0%
9	95.2%	98.0%	95.2%	98.0%	100.0%
10	100.0%	100.0%	100.0%	100.0%	100.0%
11	100.0%	100.0%	100.0%	100.0%	100.0%
12	86.8%	100.0%	90.1%	100.0%	100.0%
13	80.5%	86.5%	80.4%	85.1%	90.0%
14	62.2%	62.2%	60.5%	60.5%	51.3%
15	56.5%	56.6%	55.8%	55.9%	51.3%
16	46.5%	39.3%	46.8%	43.4%	86.0%
17	86.5%	86.5%	90.0%	90.0%	100.0%
18	100.0%	100.0%	100.0%	100.0%	100.0%
19	100.0%	100.0%	100.0%	100.0%	100.0%
20	86.5%	86.5%	90.0%	90.0%	100.0%
21	100.0%	100.0%	100.0%	100.0%	100.0%
22	100.0%	100.0%	100.0%	100.0%	100.0%
23	100.0%	100.0%	100.0%	100.0%	100.0%
24	100.0%	100.0%	100.0%	100.0%	100.0%
25	100.0%	100.0%	100.0%	100.0%	100.0%
26	100.0%	100.0%	100.0%	100.0%	100.0%
27	100.0%	100.0%	100.0%	100.0%	100.0%
28	100.0%	100.0%	100.0%	100.0%	100.0%
29	100.0%	100.0%	100.0%	100.0%	100.0%
30	100.0%	100.0%	100.0%	100.0%	100.0%
31	86.6%	86.6%	90.1%	90.1%	100.0%
32	100.0%	100.0%	100.0%	100.0%	100.0%
33	100.0%	100.0%	100.0%	100.0%	100.0%
34	100.0%	100.0%	100.0%	100.0%	100.0%
35	100.0%	100.0%	100.0%	100.0%	100.0%
36	100.0%	100.0%	100.0%	100.0%	100.0%
37	100.0%	100.0%	100.0%	100.0%	100.0%
38	100.0%	100.0%	100.0%	100.0%	100.0%
39	100.0%	100.0%	100.0%	100.0%	100.0%
40	100.0%	100.0%	100.0%	100.0%	100.0%
41	100.0%	100.0%	100.0%	100.0%	100.0%
42	100.0%	100.0%	100.0%	100.0%	100.0%
43	100.0%	100.0%	100.0%	100.0%	100.0%
44	100.0%	100.0%	100.0%	100.0%	100.0%
45	100.0%	100.0%	100.0%	100.0%	100.0%
46	100.0%	100.0%	100.0%	100.0%	100.0%
47	100.0%	100.0%	100.0%	100.0%	100.0%
48	100.0%	100.0%	100.0%	100.0%	100.0%
49	100.0%	100.0%	100.0%	100.0%	100.0%
Plan Average	**94.10%**	**94.9%**	**94.5%**	**95.2%**	**97.5%**

27. Looking first at plan-wide averages, Remedial Maps 1-3 retain more than 94% of the population intact within the Enacted Plan's district boundaries. Stated differently, only up to 6% of the population is impacted by changes that the Remedial Maps necessitated. For Remedial Map 4, the plan-wide core retention score is 95.2%, and for Remedial Map 5, it is 97.5%.

28. As previously described, the creation of a remedial district will naturally have a greater impact on the immediately adjacent districts. This is particularly the case in the subject jurisdiction since the surrounding areas include many sparsely populated regions and geographic features. Not surprisingly, then, LDs 14, 15, 8, and 16 generally retain less people than other impacted districts farther away from remedial LD 14, such as LDs 5, 7, 9, 12, 17, 20, and 31. This "ripple" effect is because changes to pre-existing district boundaries generally decrease as one moves farther away and outward from the remedial LD 14, thereby increasing the core retention of the aforementioned districts.

29. Thus, the ultimately necessary boundary changes beyond the remedial district itself are simply a natural consequence of balancing Washington's redistricting criteria and other traditional redistricting criteria.

30. Also, because balancing redistricting criteria presents inherent tradeoffs, I offered the Court multiple configurations of remedial LD 14 and surrounding districts, each reflecting a different and reasonable way of balancing redistricting criteria. As a result, some proposed Remedial Maps required different changes to surrounding districts than others. For example, in Remedial Maps 2 and 4, LD 13 crosses the Cascades, but in Remedial Maps 1, 3, and 5, it does not.

V. Districts in the Remedial Maps are Reasonably Compact

31. Dr. Trende does not dispute that the compactness of every Remedial Map is nearly identical to the compactness of the Enacted Plan. And he does not dispute my conclusion that the Remedial Maps are reasonably compact, especially in light of the often irregular physical and political subdivision boundaries in Washington State.

32. Dr. Trende instead focuses on individual district compactness scores. He notes that some districts that were altered in the Remedial Maps perform worse on compactness scores while others perform better. He does not dispute that, with the exception of LD 16 in Remedial Map 5,[2] districts in the Remedial Maps are all within the range of individual-district compactness scores in the Enacted Plan

33. Individual district compactness scores can be misleading because a single district's compactness score depends on the shape of whatever underlying features the district's boundaries follow. In Washington, district boundaries must account for irregular geographic features like mountains, roads, and waterways and must follow irregular boundaries of counties, municipalities, and precincts to the extent possible. Precincts are often large and strangely shaped, especially in sparsely populated areas. Following these subdivision boundaries, as I took great care to do, will reduce an individual district's compactness score in some areas.

34. As indicated by his discussion of LD 49 on page 18, Dr. Trende seems to agree that when a district's "shape is largely dictated by" the irregular shape of other political subdivision

[2] Although LD 16 has a new shape in Remedial Map 5, it still retains 86% of the population in Enacted Plan's LD 16, as shown in Table 2 above.

boundaries (a county in the case of LD 49), it is "unsurprising" that the district will have numerically lower compactness scores.

35. Dr. Trende's report does contain one notable inaccuracy with respect to individual compactness scores. He states on pages 18-19 of his report that Remedial Maps 1 and 2 make LD 49 less compact but this is incorrect as LD 49 was not changed in any Remedial Map.

VI. The Proposed Remedial Districts Do Not "Stitch Together Far-Flung Hispanic Populations"

36. Dr. Trende incorrectly claims that the Remedial districts in Remedial Maps 1-4 "stitch[] together district clusters of minority groups to achieve [a] 50% + 1 threshold."

37. As I have stated, I did not view any racial demographic data while drawing the Remedial Maps and did not draw any district to achieve any particular numerical target with respect to race. The various HCVAP figures Dr. Trende reports for each remedial district (LD 14) confirm this.

38. What appears to Dr. Trende as the "stich[ing] together [of] far-flung Hispanic populations" is simply the unification of population centers from East Yakima to Pasco that form a community of interest identified by the Court, including cities in the Lower Yakima Valley that I kept whole in the Remedial Maps.

39. Likewise, what appear to Dr. Trende as "appendages" that apparently "wrap into heavily Hispanic and Democratic areas," are in reality the natural effect of keeping municipalities along the Yakima Valley region whole, while also meeting all the other applicable redistricting criteria such as the equal population requirement and ensuring that districts are contiguous and can be traversed by road.

40. For instance, the boundary lines of LD 14 that connect Yakima and Pasco largely follow highways I-82 and I-182 to connect the two communities and other municipalities in between. These considerations—which Dr. Trende's analysis does not account for—dictate, to a large degree, where lines can be drawn.

41. In addition, Figures 2-4 show that LD 14 lines were drawn to connect communities of interest while following city boundaries (shown in red). The so-called appendages in this area are just oddly shaped city boundaries (e.g., see Sunnyside). These visuals also demonstrate that Wapato, Toppenish, Granger, Sunnyside, Mabton, and Grandview along the Yakima Valley were consistently kept whole across all five Remedial Maps. Only Yakima and Pasco were split, as is also the case in the Enacted Map.[3]

[3] I updated all the interactive, html maps submitted with my initial report and included city limit boundaries downloaded from the Washington State's Geospatial Open Data Portal (https://geo.wa.gov/datasets/WSDOT::wsdot-city-limits/explore). These updated interactive maps are submitted along with my response report.

Figure 2: Remedial Map 1 & 2 LD14 Boundaries Respecting COI City Boundaries Along Yakima Valley

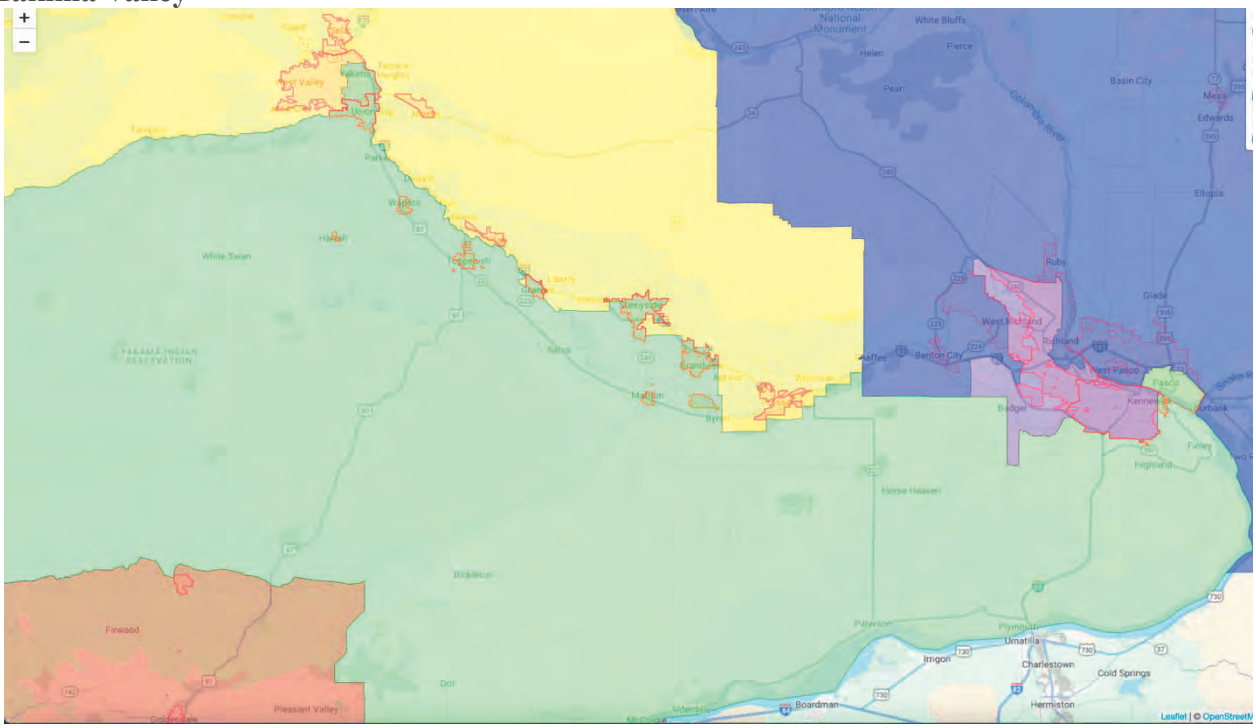


Figure 3: Remedial Map 3 & 4 LD14 Boundaries Respecting COI City Boundaries Along Yakima Valley

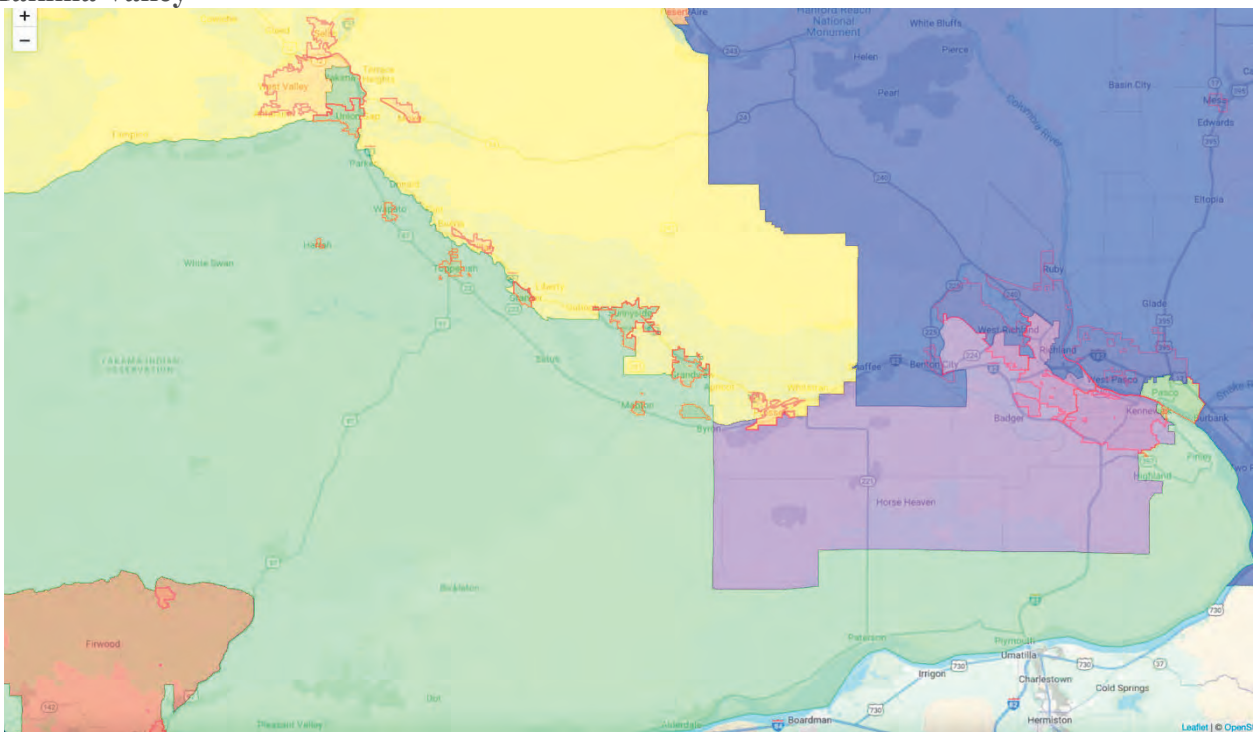
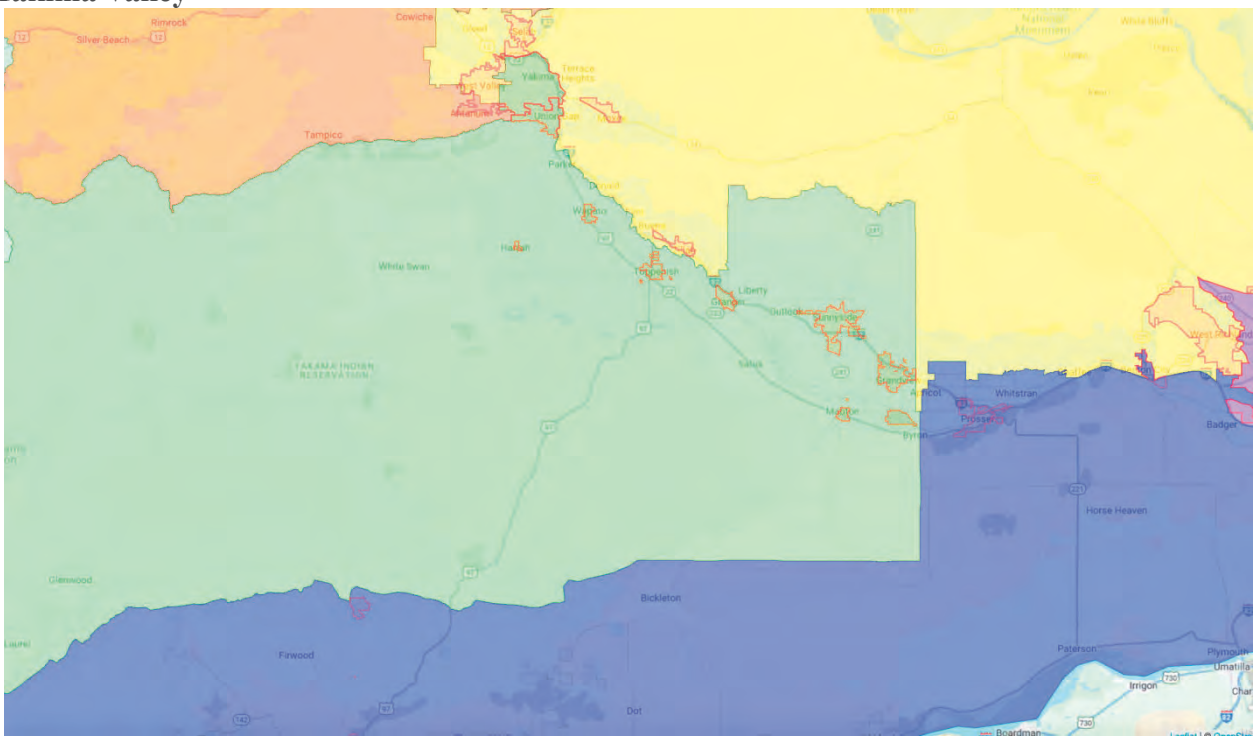


Figure 4: Remedial Map 5 LD14 Boundaries Respecting COI City Boundaries Along Yakima Valley



42. Finally, Dr. Trende's own visuals undermine the claim that Hispanic areas were carved out while white areas were excluded. For illustrative purposes, I have pasted his first two dot plots below and added red arrows in all the areas in which Hispanic areas (blue dots) were *not* included in LD14 and white areas (orange Xs) *were* included in LD 14. There are over a dozen examples of Hispanic areas being excluded, while white areas were included as a byproduct of uniting communities of interest and respecting other applicable redistricting criteria.

Figure 5: Dr. Trende's Figure 12, Page 32

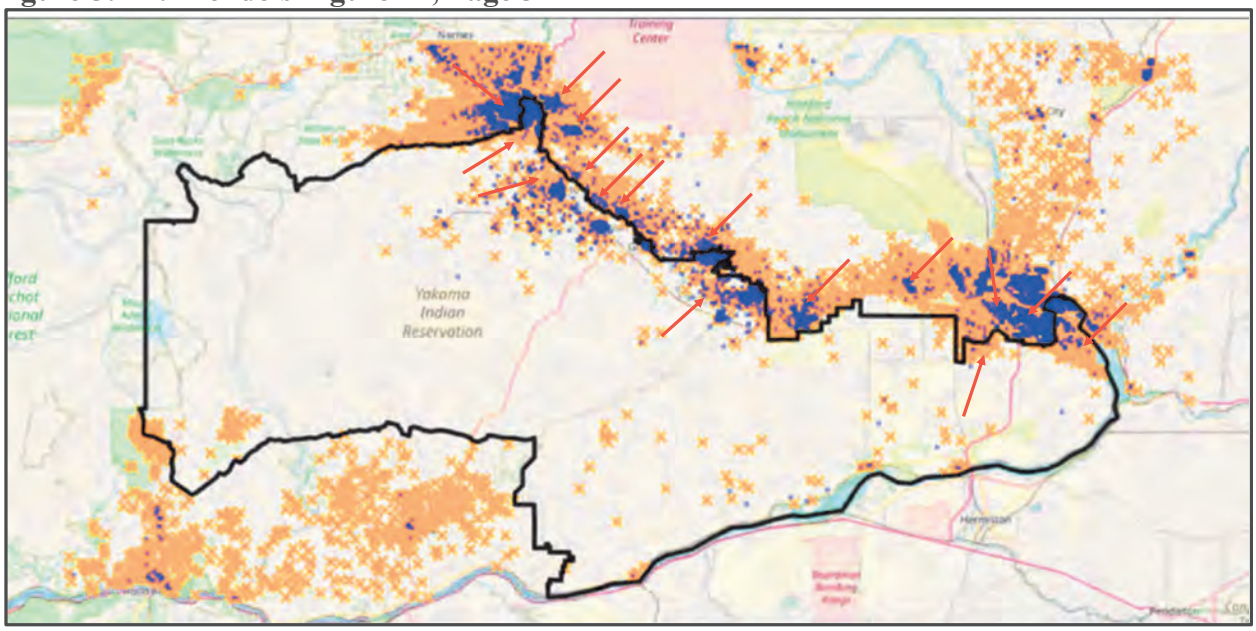
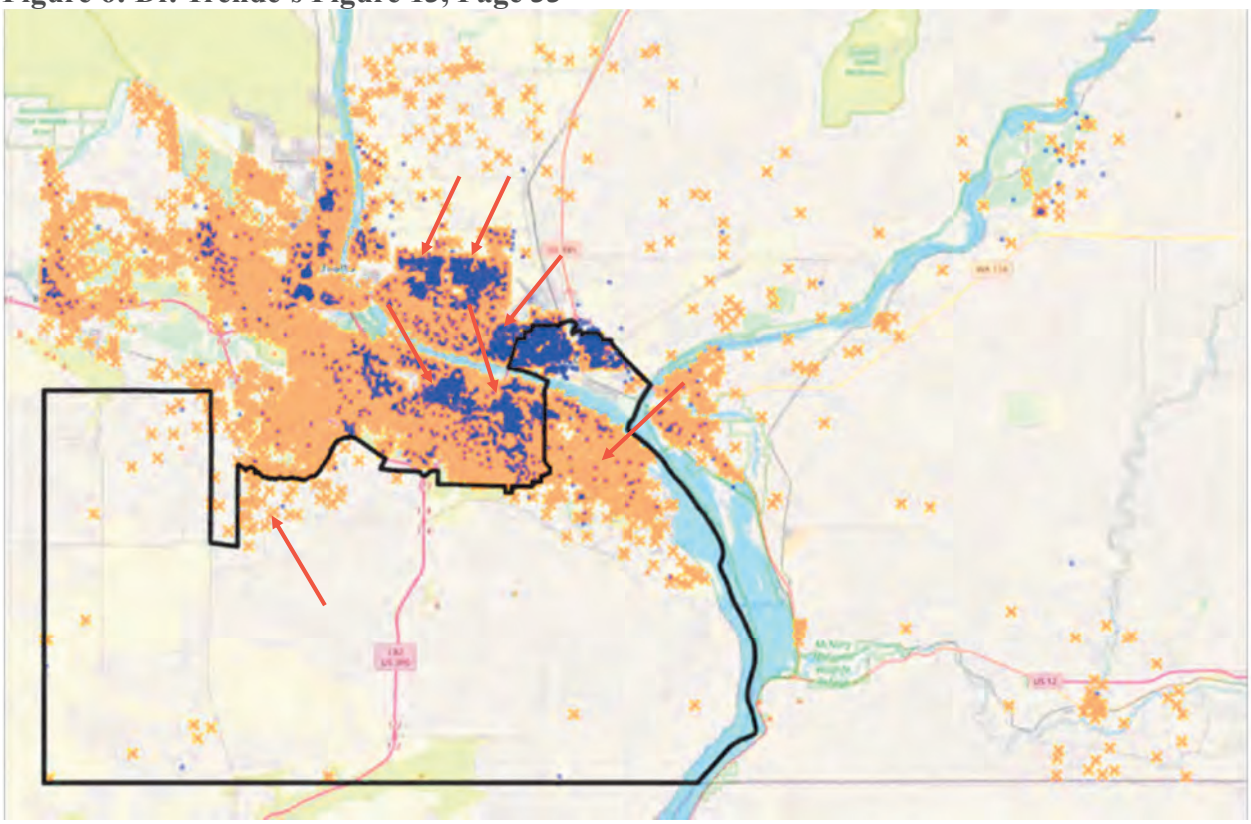


Figure 6: Dr. Trende's Figure 13, Page 33



VII. The Proposed Remedial Plans Were Not Drawn to Favor or Disfavor Any Political Party and Do Not Have That Effect

43. Dr. Trende suggests that changes made to districts beyond LDs 14 and 15 in Remedial Maps 1-4 have "meaningful" political impact. However, the metrics Dr. Trende references show no substantive partisan swing of districts in any district beyond LDs 14 and 15. Common metrics of partisan bias, which Dr. Trende does not consider, also confirm that Remedial Maps do not meaningfully shift the partisan balance as compared to the Enacted Plan.

44. First, it is important to note that Washington law forbids drawing redistricting plans "purposely to favor or discriminate against any political party." RCW 44.05.090. For this reason, I did not consider any partisan or election data while drawing the proposed Remedial Maps. Any changes to the partisan makeup of districts are incidental to following the redistricting criteria set out in Washington law and traditional redistricting criteria.

45. Second, upon reviewing the metrics used by Dr. Trende, I find that none of the districts in the Remedial Maps, aside from LD 14 and 15, exhibit any meaningful change in partisan performance, and the changes to the district boundaries do not substantively advantage or disadvantage either party.

46. This is apparent, for example, from the composite election results and individual election results Dr. Trende references in his tables on pages 33, 37, 55, and 58.

47. In Table 3, I present the 2016-2020 DRA composite vote share[4] for Republicans and Democrats for the districts other than LDs 14 and 15 in each Remedial Map and the Enacted Plan to evaluate Dr. Trende's claim that the changes to these districts meaningfully changed their partisan performance. I exclude District 49 from the table because it is unclear why Dr. Trende used this district in his analysis when none of the Remedial Maps introduced any changes to its boundaries.

Table 3: Partisan Performance by District and Plan

District	Enacted Map		Remedial Map 1		Remedial Map 2		Remedial Map 3		Remedial Map 4		Remedial Map 5	
	Dem	*Rep*	*Dem*	*Rep*	*Dem*	*Rep*	*Dem*	*Rep*	*Dem*	*Rep*	*Dem*	*Rep*
2	40.62%	57.43%	40.28%	57.76%	40.28%	57.76%	40.79%	57.24%	40.79%	57.24%	40.62%	57.43%
5	56.73%	41.48%	55.71%	42.52%	56.73%	41.48%	55.90%	42.31%	56.73%	41.48%	56.73%	41.48%
7	33.65%	65.30%	34.65%	64.25%	33.65%	65.30%	34.33%	64.57%	33.65%	65.30%	33.65%	65.30%
8	39.79%	58.39%	37.99%	60.16%	37.99%	60.16%	37.31%	60.88%	37.31%	60.88%	39.79%	58.39%
9	40.35%	58.10%	40.94%	57.51%	40.57%	57.88%	40.94%	57.51%	40.57%	57.88%	40.35%	58.10%
12	45.61%	52.82%	47.87%	50.48%	45.61%	52.82%	47.55%	50.83%	45.61%	52.82%	45.61%	52.82%
13	34.96%	63.85%	35.54%	63.32%	35.68%	63.07%	35.67%	63.21%	36.35%	62.42%	34.25%	64.57%
16	38.49%	59.92%	40.10%	58.34%	41.33%	57.15%	40.39%	58.03%	41.22%	57.20%	40.64%	57.95%
17	49.36%	49.08%	50.52%	47.96%	50.52%	47.96%	50.83%	47.63%	50.83%	47.63%	49.36%	49.08%
20	35.17%	63.44%	35.46%	63.22%	35.46%	63.22%	35.12%	63.55%	35.12%	63.55%	35.17%	63.44%
31	44.13%	54.16%	42.57%	55.70%	43.98%	54.24%	42.74%	55.54%	43.43%	54.82%	44.13%	54.16%
# R/D Performing Districts	**1**	**8**	**1**	**8**	**1**	**8**	**1**	**8**	**1**	**8**	**1**	**8**

48. For ease of comparison across the plans, I report all affected districts across the maps even though some districts were not altered in certain Remedial Maps (e.g., Remedial Maps 2, 4, and 5 do not make any changes to the boundaries of the Enacted District 7).

[4] Dr. Trende appears to have made errors in his report in describing which specific elections the 2016-2020 DRA composite score includes. On Page 33 of his report, Dr. Trende claims that the DRA composite includes: "the 2020 and 2016 presidential elections, the 2018 and 2020 senate elections, the 2016 gubernatorial election, and the 2020 attorney general election." That is factually inaccurate because Washington State did not hold a Senatorial election in 2020. The actual 2016-2020 DRA composite score includes the following contests: the 2016 and 2020 Presidential elections, the 2016 and 2018 Senatorial elections, the 2020 Gubernatorial election, and the 2020 election for Attorney General.

49. The colors in the table correspond to how the districts performed using the 2016-2020 DRA composite. 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%). Democratic performing districts are color-coded in blue and Republican performing districts are color-coded in red. Conversely, a district is considered "competitive" or "toss-up" if the difference between the party votes shares of that district is less than 10%, which suggests that the district is more likely than a reliable district to swing back and forth depending on the political currents of the year. This competitive threshold is routinely considered and is also utilized by DRA.

50. Table 3 shows that in the Enacted Plan, one district (LD 5) reliably elects Democratic candidates while eight districts (LDs 2, 7, 8, 9, 13, 16, 20, and 31) reliably elect Republican candidates. The outcome in every one of the Remedial Maps is the same. The slight reduction in Republican vote share across the Remedial Maps has no substantive impact on whether a Republican is likely to carry LDs 2, 7, 8, 9, 13, 16, 20, and 31—Republicans maintain reliable margins in those districts.[5] In fact, the Republican vote shares also marginally increase in some districts, such as LD 8 Remedial Maps 1-4 and LD 31 in Remedial Maps 1 and 3.

[5] On page 33, Dr. Trende writes: "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." I suspect Dr. Trende made another error in his report because "within" +/-10% suggests that if a district sees a movement of one tenth of a percentage point it would be considered as "potentially noteworthy" per his analysis and interpretation of the results. Political scientists do not consider such minor changes as politically meaningful when determining the partisan makeup of a district.

51. Similarly, the slight reduction in Democratic vote share in LD 5 in Remedial Maps 1 and 3 has no substantive impact on whether a Democrat is likely to prevail by a comfortable margin in that district. On page 36, Dr. Trende appears to suggest, incorrectly, that LD 5 in Remedial Map 1 was "shifted leftward." But as shown in Table 3, the changes made to LD 5 resulted in a slight *decrease* in Democratic performance in both Remedial Maps 1 and 3.

52. LDs 12 and 17 are toss-up districts in the Enacted Plan and both remain so in Remedial Plans 1 and 3, the only plans in which those districts were altered. Dr. Trende's suggestion that these districts should be further altered to restore their precise vote shares in the Enacted Plan has two problems. First, his suggestion to place parts of southeastern Vancouver into LD 49 rather than LD 17 would require altering an additional district that is otherwise untouched in every Remedial Map. More fundamentally, the alterations Dr. Trende suggests amount to partisan gerrymandering, which is expressly prohibited in Washington State, and which I avoided by not utilizing any political data when drawing district lines.

53. Substantively, then, the changes to districts other than LDs 14 and 15 in the Remedial Maps neither advantage nor disadvantage Democrats or Republicans as neither party gains or loses reliable seats in these districts relative to the Enacted Map. And the notion that Republicans are meaningfully affected by changes to these districts compared to the Enacted Plan is plainly incorrect.

54. Third, prevailing measures of partisan bias in redistricting plans confirm that the Remedial Maps do not meaningfully shift the partisan balance as compared to the Enacted Plan.

55. I examine two popular metrics that measure partisan skew to compare the Enacted Plan to the Remedial Maps.

56. The first metric I consider is called the "Efficiency Gap" (EG), which considers inefficient or "wasted" votes to evaluate the extent to which a party's voters are cracked or packed across districts to produce an advantage for one party over another.[6]

57. A positive efficiency gap indicates more Democratic wasted votes (i.e., a pro-Republican bias), while a negative efficiency gap indicates more Republican wasted votes (i.e., a pro-Democratic bias). As a general rule, an EG score closer to zero indicates a fairer map.

58. The second metric I rely on is called "Declination," which considers threshold-related asymmetry in the distribution of votes across districts to evaluate possible partisan gerrymandering. A declination value near 0 is indicative of a fair map, and the greater the declination value, the greater likelihood that the map is a partisan gerrymander. Once again, positive values indicate a pro-Republican tilt, while negative values indicate a pro-Democratic tilt.[7]

59. Table 4 shows the results of EG and Declination scores using the most up-to-date methodology outlined by the publicly available tool PlanScore.[8]

[6] PlanScore, "Efficiency Gap," https://planscore.org/metrics/efficiencygap/.
[7] PlanScore, "Declination," https://planscore.org/metrics/declination/.
[8] PlanScore, "Unified District Model," https://planscore.org/models/data/2022F/.

Table 4: Comparison of Partisan Bias Metrics Across Plans

Plans	*Efficiency Gap*	*Declination*
Enacted Map	3.2% R	0.07 R
Remedial Map 1	2.0% R	0.01 R
Remedial Map 2	2.2% R	0.02 R
Remedial Map 3	2.0% R	0.01 R
Remedial Map 4	2.2% R	0.02 R
Remedial Map 5	2.2% R	0.02 R

60. The EG and Declination scores in Table 4 for the Remedial Maps are slightly closer to 0 but do not meaningfully diverge from the scores for the Enacted Plan. They show that the Remedial Maps are, like the Enacted Plan, close to fair and maintain the very slight Republican bias found in the Enacted Plan. The same is true for the adjusted Remedial Maps 1A-5A (see Part VIII and Appendix Table 4).

VIII. Incumbent Displacement and Adjusted Remedial Maps

61. It is important to note that Washington's redistricting criteria do not include protecting incumbents. For this reason, I attempted to address incumbent-pairing, where possible, only after ensuring the Remedial Maps abided by Washington's redistricting criteria and minimally impacted surrounding districts.

62. As I stated in my initial report, I did this based on the publicly accessible data available to me at that time. It has since become clear, based on the filings from the Secretary of State and the declaration of Mr. Pharris, that some of the addresses I had for incumbents were out of date or inaccurate. Based upon updated address data provided by the Secretary of State, I have made small adjustments that resolve many of the incumbent pairings identified by Mr. Pharris and Dr. Trende while still adhering to Washington's redistricting criteria.

63. Using the updated data provided by the Secretary of State's office, I have drawn five new Remedial Maps (Remedial Maps 1A-5A), each a slight variation on Remedial Maps 1-5, to address, to the extent possible, the incumbent displacements in those maps.

64. Because LDs 14 and 15 must be redrawn substantially to comply with the Court's order, federal law, and Washington redistricting criteria, displacement of incumbents from these districts is to be expected.

65. The displaced incumbents outside LDs 14 and 15 were largely a product of incorrect or out-of-date address data, and I have adjusted the maps to correct for these changes. Any additional incumbent displacements outside of LDs 14 and 15 are the result of very specific mapping considerations, which I explain below.

66. In Map 5A, I was able to make a very minor adjustment to the boundary between LD 13 and LD 15 to resolve Intervenor LD 13 Representative Alex Ybarra's particular concern about being paired with another House incumbent in LD 13.

67. As also indicated in further detail below, I conclude that all five additional Remedial Maps abide by Washington's redistricting criteria and other traditional redistricting criteria. Furthermore, I did not rely on any political, partisan, or racial demographic data while making changes to any district boundaries.

A. Plaintiffs' Remedial Map 1A

68. Figure 7 provides a visual depiction of Remedial Map 1A.

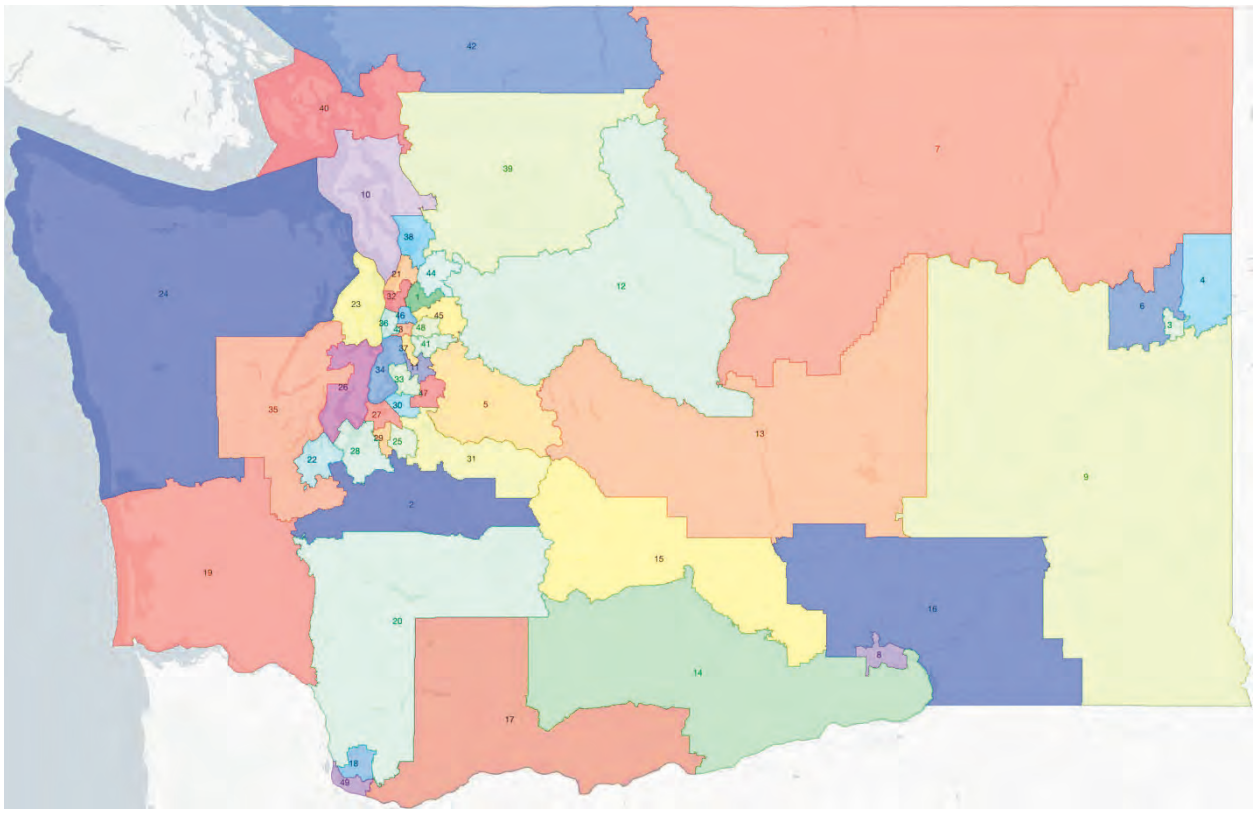


Figure 7: Remedial Map 1A

69. Remedial Map 1A is a variation on Remedial Map 1 that displaces fewer incumbents.

70. Aside from the legislators in enacted LDs 14 and 15, Mr. Pharris and Dr. Trende identified four incumbents displaced in Remedial Map 1: the LD 8 Representative, Position 1, the LD 31 Senator, the LD 31 Representative, Position 1, and the LD 12 Senator.

71. I have adjusted the boundary lines so that the LD 8 Representative, Position 1 now resides in LD 8, and the LD 31 Senator and the LD 31 Representative, Position 1 now reside in LD 31.

72. To accomplish this change, boundary changes were made to LDs 8, 16, 5, and 31. Remedial Map 1A is otherwise identical to Map 1.

73. Remedial Map 1A still keeps the LD 12 Senator in LD 7. The changes necessary for the LD 12 Senator to be in LD 12 are reflected in Remedial Maps 2A and 4A, and in Remedial Map 5A.[9]

74. As noted above, the displacement of any LD 14 and 15 Senators and Representatives were a byproduct of relying on the applicable redistricting criteria to draw Remedial LD 14 that unites the population centers forming a community of interest between East Yakima and Pasco, while keeping the Yakama Nation Reservation whole, along with some off-reservation trust lands and fishing villages.

75. **Appendix Table 1**, located at the end of this document provides total population based on Washington's adjusted 2020 U.S. Census data and the population deviation from the target population (157,251). According to Table 1, Remedial Map 1A has a negligible total population deviation[10] of 0.23%, which is less than the Enacted Plan and well below the 10% population deviation threshold for state legislative plans accepted by courts.

76. **Appendix Table 2** provides the Reock and Polsby-Popper compactness scores for Remedial Map 1A, which are largely on par with the compactness scores for the Enacted Plan.

77. Remedial Map 1A's districts are comprised of convenient, contiguous territory and are traversable.

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[9] Upon inspection, it appears that the Redistricting Commission drew part of the boundary between LD 12 and LD 7 in the Enacted Plan solely to protect LD 12's incumbent senator. Indeed, a small part of LD 12 crosses the Columbia River from Chelan County into Douglas County and a small part of East Wenatchee, for no apparent purpose other than keeping the LD 12 senator in that district.

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

78. **Appendix Table 3** provides statistics regarding county splits for Remedial Map 1A, including county-district splits and district-county splits.[11] Remedial Map 1A performs about the same on county split metrics as compared to the Enacted Plan.

79. **Appendix Table 4** provides the district and plan partisan performance composite scores (2016-2020), which were compiled and calculated only after the drawing of Remedial Map 1A was finalized. The results show that neither Democrats nor Republicans were substantively advantaged or disadvantaged by any boundary changes.

80. **Appendix Table 5** provides EG and Declination scores, which show that Remedial Map 1A, like the Enacted Plan, is close to fair and maintains the very slight Republican bias found in the Enacted Plan.

81. **Appendix Table 6** provides the core retention metrics for Remedial Map 1A.

82. In summary, Remedial Map 1A is compliant with all relevant redistricting criteria and does not introduce any other boundary changes outside of the boundaries of LD 8, 16, 5, and 31.

B. Plaintiffs' Remedial Map 2A

83. Figure 8 provides a visual depiction of Remedial Map 2A.

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

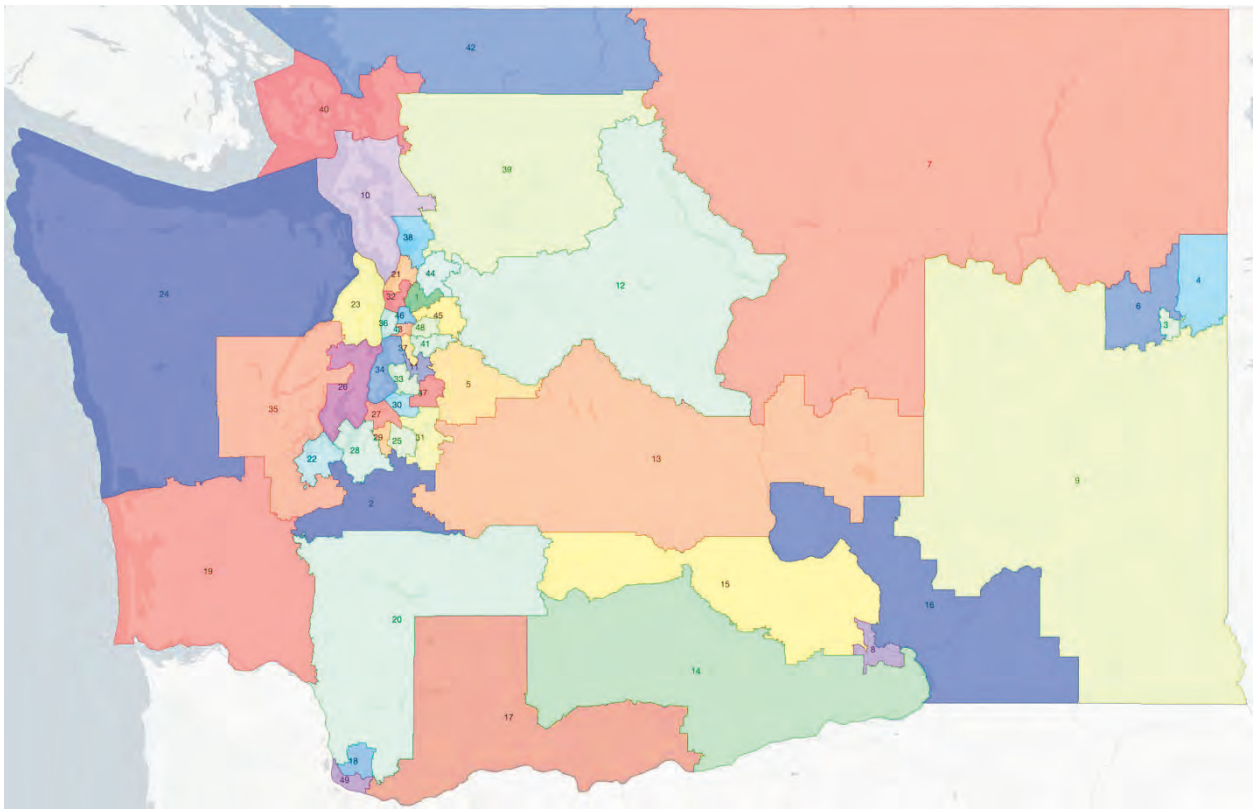

Figure 8: Remedial Map 2A

84. Remedial Map 2A is a variation on Remedial Map 2 that displaces fewer incumbents.

85. Aside from the legislators in enacted LDs 14 and 15, Mr. Pharris and Dr. Trende identified only one incumbent displaced in Remedial Map 2: the LD 8 Representative, Position 1.

86. Boundary changes were made to LDs 8 and 16 so that the current LD 8 Representative, Position 1 now resides in LD 8. Remedial Map 2A is otherwise identical to Map 2.

87. As noted above, the displacement of any LD 14 and 15 Senators and Representatives were a byproduct of relying on the applicable redistricting criteria to draw Remedial LD 14 that unites the population centers forming a community of interest between East Yakima and Pasco, while keeping the Yakama Nation Reservation whole, along with some off-reservation trust lands and fishing villages.

88. **Appendix Table 1**, located at the end of this document provides total population based on Washington's adjusted 2020 U.S. Census data and the population deviation from the target population (157,251). According to Table 1, Remedial Map 2A has a negligible total population deviation of 0.22%, which is less than the Enacted Plan and well below the 10% population deviation threshold for state legislative plans accepted by courts.

89. **Appendix Table 2** provides the Reock and Polsby-Popper compactness scores for Remedial Map 2A, which are largely on par with the compactness scores for the Enacted Plan.

90. Remedial Map 2A's districts are comprised of convenient, contiguous territory and are traversable.

91. **Appendix Table 3** provides statistics regarding county splits for Remedial Map 2A, including county-district splits and district-county splits. Remedial Map 2A performs about the same on county split metrics as compared to the Enacted Plan.

92. **Appendix Table 4** provides the district and plan partisan performance composite scores (2016-2020), which were compiled and calculated only after the drawing of Remedial Map 2A was finalized. The results show that neither Democrats nor Republicans were substantively advantaged or disadvantaged by any boundary changes.

93. **Appendix Table 5** provides EG and Declination scores, which show that Remedial Map 2A, like the Enacted Plan, is close to fair and maintains the very slight Republican bias found in the Enacted Plan.

94. **Appendix Table 6** provides the core retention metrics for Remedial Map 2A.

95. In summary, Remedial Map 2A is compliant with all relevant redistricting criteria and does not introduce any other boundary changes outside of the boundaries of LD 8 and 16.

C. Plaintiffs' Remedial Map 3A

96. Figure 9 provides a visual depiction of Remedial Map 3A.

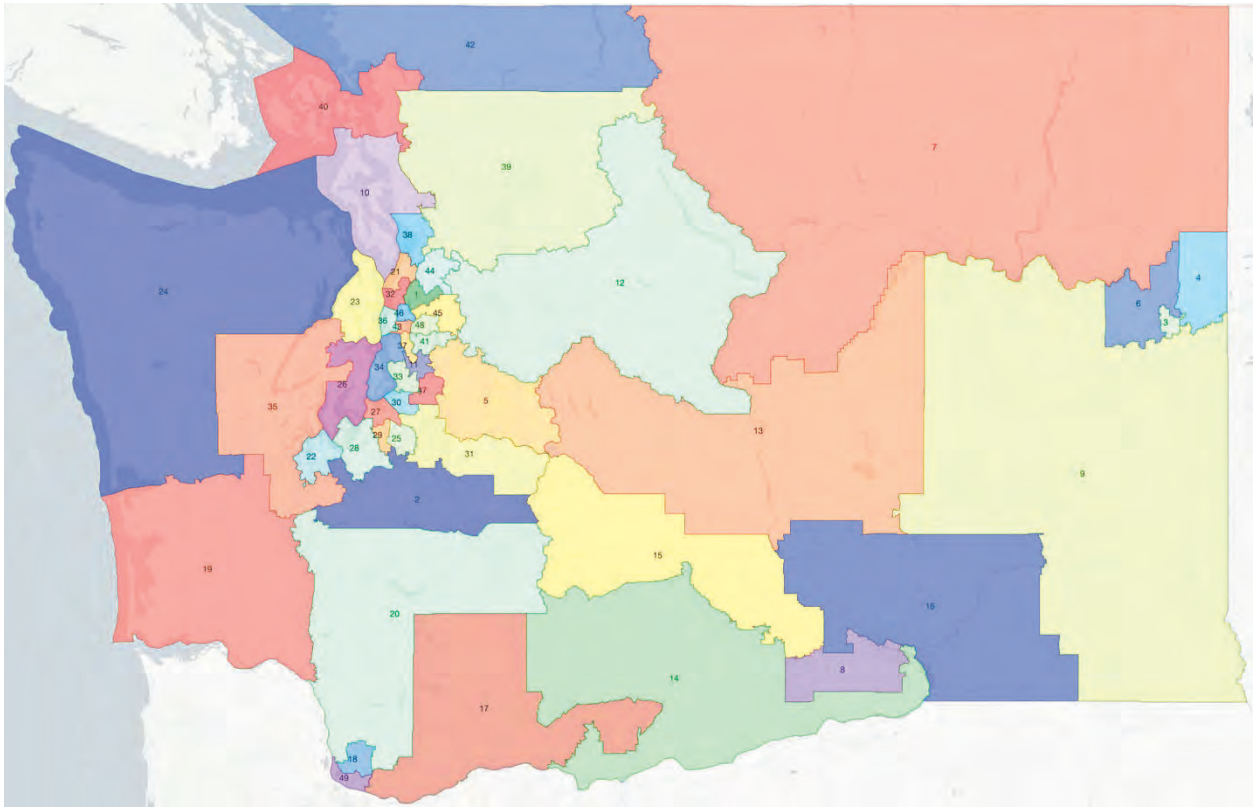

Figure 9: Remedial Map 3A

97. Remedial Map 3A is a variation on Remedial Map 3 that displaces fewer incumbents.

98. Aside from the legislators in enacted LDs 14 and 15, Mr. Pharris and Dr. Trende identified three incumbents displaced in Remedial Map 3: the LD 8 Representative, Position 1, the LD 31 Senator, and the LD 12 Senator.

99. I have adjusted the boundary lines so that the LD 8 Representative, Position 1 now resides in LD 8, and the LD 31 Senator now resides in LD 31.

100. To accomplish this change, boundary changes were made to LDs 8, 16, 5, and 31. Remedial Map 3A is otherwise identical to Map 3.

101. Remedial Map 3A still keeps the LD 12 Senator in LD 7. The changes necessary for the LD 12 Senator to be in LD 12 are reflected in Remedial Maps 2A and 4A, and in Remedial Map 5A.

102. As noted above, the displacement of any LD 14 and 15 Senators and Representatives were a byproduct of relying on the applicable redistricting criteria to draw Remedial LD 14 that unites the population centers forming a community of interest between East Yakima and Pasco, while keeping the Yakama Nation Reservation and all off-reservation trust lands and fishing villages within LD 14.

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

104. **Appendix Table 2** provides the Reock and Polsby-Popper compactness scores for Remedial Map 3A, which are largely on par with the compactness scores for the Enacted Plan.

105. Remedial Map 3A's districts are comprised of convenient, contiguous territory and are traversable.

106. **Appendix Table 3** provides statistics regarding county splits for Remedial Map 3A, including county-district splits and district-county splits. Remedial Map 3A performs about the same on county split metrics as compared to the Enacted Plan.

107. **Appendix Table 4** provides the district and plan partisan lean composite scores (2016-2020), which were compiled and calculated only after the drawing of Remedial Map 3A was finalized. The results show that neither Democrats nor Republicans were substantively advantaged or disadvantaged by any boundary changes.

108. **Appendix Table 5** provides EG and Declination scores, which show that Remedial Map 3A, like the Enacted Plan, is close to fair and maintains the very slight Republican bias found in the Enacted Plan.

109. **Appendix Table 6** provides the core retention metrics for Remedial Map 3A.

110. In summary, Remedial Map 3A is compliant with all relevant redistricting criteria and does not introduce any other boundary changes outside of the boundaries of LD 8, 16, 5, and 31.

D. Plaintiffs' Remedial Map 4A

111. Figure 10 provides a visual depiction of Remedial Map 4A.

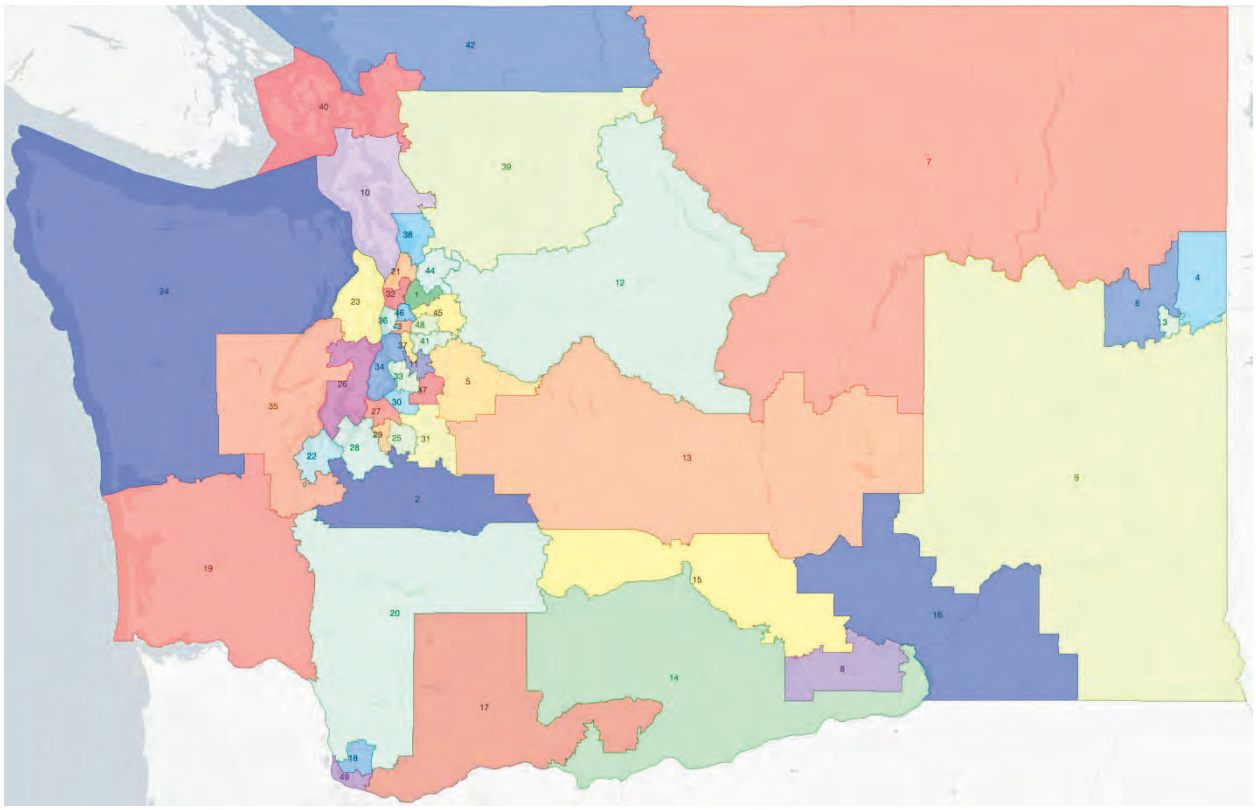

Figure 10: Remedial Map 4A

112. Remedial Map 4A is a variation on Remedial Map 4 that displaces fewer incumbents.

113. Aside from the legislators in enacted LDs 14 and 15, Mr. Pharris and Dr. Trende identified only one incumbent displaced in Remedial Map 4: the LD 8 Representative, Position 1.

114. Boundary changes were made to LDs 8 and 16 so that the current LD 8 Representative, Position 1 now resides in LD 8. Remedial Map 4A is otherwise identical to Map 4.

115. As noted above, the displacement of any LD 14 and 15 Senators and Representatives were a byproduct of relying on the applicable redistricting criteria to draw Remedial LD 14 that unites the population centers forming a community of interest between East Yakima and Pasco, while keeping the Yakama Nation Reservation whole, along with some off-reservation trust lands and fishing villages.

116. **Appendix Table 1**, located at the end of this document provides total population based on Washington's adjusted 2020 U.S. Census data and the population deviation from the target population (157,251). According to Table 1, Remedial Map 4A has a negligible total population deviation of 0.24%, which is less than the Enacted Plan and well below the 10% population deviation threshold for state legislative plans accepted by courts.

117. **Appendix Table 2** provides the Reock and Polsby-Popper compactness scores for Remedial Map 4A, which are largely on par with the compactness scores for the Enacted Plan.

118. Remedial Map 4A's districts are comprised of convenient, contiguous territory and are traversable.

119. **Appendix Table 3** provides statistics regarding county splits for Remedial Map 4A, including county-district splits and district-county splits. Remedial Map 4A performs about the same on county split metrics as compared to the Enacted Plan.

120. **Appendix Table 4** provides the district and plan partisan lean composite scores (2016-2020), which were compiled and calculated only after the drawing of Remedial Map 4A was finalized. The results show that neither Democrats nor Republicans were substantively advantaged or disadvantaged by any boundary changes.

121. **Appendix Table 5** provides EG and Declination scores, which show that Remedial Map 4A, like the Enacted Plan, is close to fair and maintains the very slight Republican bias found in the Enacted Plan.

122. **Appendix Table 6** provides the core retention metrics for Remedial Map 4A.

123. In summary, Remedial Map 4A is compliant with all relevant redistricting criteria and does not introduce any other boundary changes outside of the boundaries of LD 8 and 16.

E. Plaintiffs' Remedial Map 5A

124. Figure 11 provides a visual depiction of Remedial Map 5A.

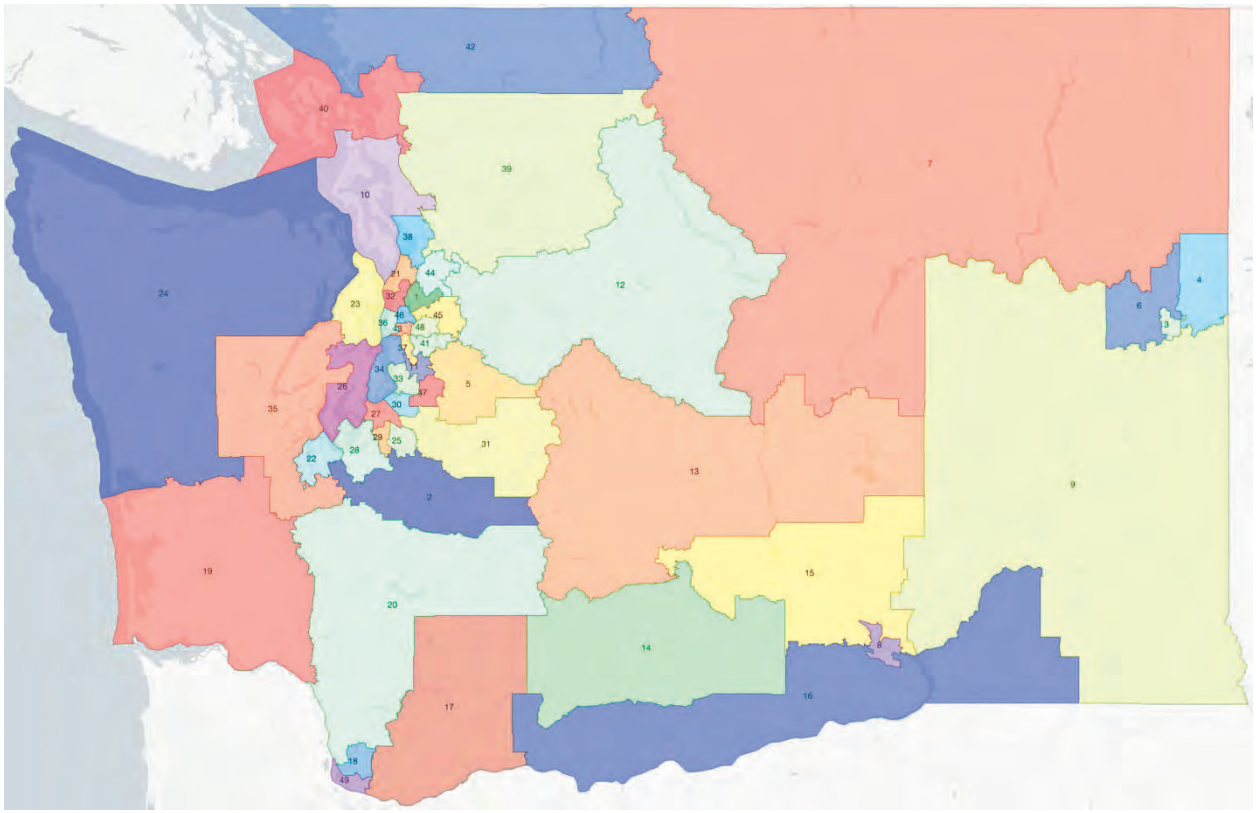

Figure 11: Remedial Map 5A

125. Remedial Map 5A is a variation on Remedial Map 5 that addresses Intervenor Alex Ybarra's concern about being paired with another house incumbent in LD 13 (only in Map 5). Very limited boundary changes, involving no more than a few precincts, were made to LDs 13 and 15 to address his concern. Remedial Map 5A is otherwise identical to Map 5. With this fix, no remedial proposal pairs Rep. Ybarra.

126. **Appendix Table 1**, located at the end of this document provides total population based on Washington's adjusted 2020 U.S. Census data and the population deviation from the target population (157,251). According to Table 1, Remedial Map 5A has a negligible total population deviation of 0.25%, which is the same as the Enacted Plan and well below the 10% population deviation threshold for state legislative plans accepted by courts.

127. **Appendix Table 2** provides the Reock and Polsby-Popper compactness scores for Remedial Map 5A, which are largely on par with the compactness scores for the Enacted Plan.

128. Remedial Map 5A's districts are comprised of convenient, contiguous territory and are traversable.

129. **Appendix Table 3** provides statistics regarding county splits for Remedial Map 5A, including county-district splits and district-county splits. Remedial Map 5A performs about the same on county split metrics as compared to the Enacted Plan.

130. **Appendix Table 4** provides the district and plan partisan lean composite scores (2016-2020), which were compiled and calculated only after the drawing of Remedial Map 5A was finalized. The results show that neither Democrats nor Republicans were substantively advantaged or disadvantaged by any boundary changes.

131. **Appendix Table 5** provides EG and Declination scores, which show that Remedial Map 5A, like the Enacted Plan, is close to fair and maintains the very slight Republican bias found in the Enacted Plan.

132. **Appendix Table 6** provides the core retention metrics for Remedial Map 5A.

133. In summary, Remedial Map 5A is compliant with all relevant redistricting criteria and does not introduce any other boundary changes outside of the boundaries of LD 13 and 15.

IX. Yakama Nation Off-Reservation Trust Lands

134. As I stated in my December 1, 2023 declaration, I drew LD 14 in Remedial Maps 3 and 4 to include the Yakama Nation Reservation and the off-reservation trust lands and fishing villages. To do so, I inspected the U.S. Census boundary file "Yakama Nation and Off-Reservation Trust Land" available on Dave's Redistricting App and made sure every parcel of off-Reservation trust land was included in LD 14.

135. On page 12 of their response brief, Intervenors claim, without support, that LD 14 in Remedial Maps 3 and 4 excludes "several off-Reservation trust parcels and traditional family homesteads in a separate legislative district from the Yakama Reservation."

136. They have provided no data showing the geographic locations of the off-Reservation trust parcels and traditional family homesteads supposedly excluded from the remedial district in Remedial Maps 3 and 4. Dr. Trende similarly offers no data to support this claim, nor does he opine on this issue. I am therefore unable to evaluate their claims.

X. Conclusion

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

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

Executed by:

Dr. Kassra AR Oskooii

Dated: January 5, 2024

Appendix

Table 1 – Population Deviation, Remedial Maps 1A-5A

District	Enacted Map			Remedial Map 1A			Remedial Map 2A			Remedial Map 3A			Remedial Map 4A			Remedial Map 5A		
	Total Pop	*Deviation*	*%*	*Total Pop*	*Deviation*	*%*	*Total Pop*	*Deviation*	*%*	*Total Pop*	*Deviation*	*%*	*Total Pop*	*Deviation*	*%*	*Total Pop*	*Deviation*	*%*
1	157284	33	0.021%	157284	33	0.021%	157284	33	0.021%	157284	33	0.021%	157284	33	0.021%	157284	33	0.021%
2	157441	190	0.121%	157371	120	0.076%	157244	-7	-0.004%	157429	178	0.113%	157429	178	0.113%	157441	190	0.121%
3	157244	-7	-0.004%	157244	-7	-0.004%	157244	-7	-0.004%	157244	-7	-0.004%	157244	-7	-0.004%	157244	-7	-0.004%
4	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%
5	157289	38	0.024%	157361	110	0.070%	157289	38	0.024%	157378	127	0.081%	157289	38	0.024%	157289	38	0.024%
6	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%
7	157250	-1	-0.001%	157248	-3	-0.002%	157250	-1	-0.001%	157313	62	0.039%	157250	-1	-0.001%	157250	-1	-0.001%
8	157266	15	0.010%	157120	-131	-0.083%	157319	68	0.043%	157198	-53	-0.034%	157198	-53	-0.034%	157266	15	0.010%
9	157247	-4	-0.003%	157125	-126	-0.080%	157156	-95	-0.060%	157125	-126	-0.080%	157156	-95	-0.060%	157247	-4	-0.003%
10	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%
11	157228	-23	-0.015%	157228	-23	-0.015%	157228	-23	-0.015%	157228	-23	-0.015%	157228	-23	-0.015%	157228	-23	-0.015%
12	157247	-4	-0.003%	157175	-76	-0.048%	157247	-4	-0.003%	157096	-155	-0.099%	157247	-4	-0.003%	157247	-4	-0.003%
13	157248	-3	-0.002%	157145	-106	-0.067%	157250	-1	-0.001%	157360	109	0.069%	157312	61	0.039%	157259	8	0.005%
14	157253	2	0.001%	157166	-85	-0.054%	157166	-85	-0.054%	157318	67	0.043%	157318	67	0.043%	157377	126	0.080%
15	157231	-20	-0.013%	157409	158	0.100%	157203	-48	-0.031%	157122	-129	-0.082%	157070	-181	-0.115%	157108	-143	-0.091%
16	157254	3	0.002%	157159	-92	-0.059%	157197	-54	-0.034%	157182	-69	-0.044%	157221	-30	-0.019%	157242	-9	-0.006%
17	157239	-12	-0.008%	157405	154	0.098%	157405	154	0.098%	157346	95	0.060%	157346	95	0.060%	157239	-12	-0.008%
18	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%
19	157236	-15	-0.010%	157236	-15	-0.010%	157236	-15	-0.010%	157236	-15	-0.010%	157236	-15	-0.010%	157236	-15	-0.010%
20	157243	-8	-0.005%	157401	150	0.095%	157401	150	0.095%	157353	102	0.065%	157353	102	0.065%	157243	-8	-0.005%
21	157212	-39	-0.025%	157212	-39	-0.025%	157212	-39	-0.025%	157212	-39	-0.025%	157212	-39	-0.025%	157212	-39	-0.025%
22	157257	6	0.004%	157257	6	0.004%	157257	6	0.004%	157257	6	0.004%	157257	6	0.004%	157257	6	0.004%
23	157258	7	0.004%	157258	7	0.004%	157258	7	0.004%	157258	7	0.004%	157258	7	0.004%	157258	7	0.004%
24	157233	-18	-0.011%	157233	-18	-0.011%	157233	-18	-0.011%	157233	-18	-0.011%	157233	-18	-0.011%	157233	-18	-0.011%
25	157268	17	0.011%	157268	17	0.011%	157268	17	0.011%	157268	17	0.011%	157268	17	0.011%	157268	17	0.011%
26	157227	-24	-0.015%	157227	-24	-0.015%	157227	-24	-0.015%	157227	-24	-0.015%	157227	-24	-0.015%	157227	-24	-0.015%
27	157239	-12	-0.008%	157239	-12	-0.008%	157239	-12	-0.008%	157239	-12	-0.008%	157239	-12	-0.008%	157239	-12	-0.008%
28	157289	38	0.024%	157289	38	0.024%	157289	38	0.024%	157289	38	0.024%	157289	38	0.024%	157289	38	0.024%
29	157054	-197	-0.125%	157054	-197	-0.125%	157054	-197	-0.125%	157054	-197	-0.125%	157054	-197	-0.125%	157054	-197	-0.125%
30	157277	26	0.017%	157277	26	0.017%	157277	26	0.017%	157277	26	0.017%	157277	26	0.017%	157277	26	0.017%
31	157223	-28	-0.018%	157346	95	0.060%	157304	53	0.034%	157211	-40	-0.025%	157242	-9	-0.006%	157223	-28	-0.018%
32	157211	-40	-0.025%	157211	-40	-0.025%	157211	-40	-0.025%	157211	-40	-0.025%	157211	-40	-0.025%	157211	-40	-0.025%
33	157256	5	0.003%	157256	5	0.003%	157256	5	0.003%	157256	5	0.003%	157256	5	0.003%	157256	5	0.003%
34	157234	-17	-0.011%	157234	-17	-0.011%	157234	-17	-0.011%	157234	-17	-0.011%	157234	-17	-0.011%	157234	-17	-0.011%
35	157268	17	0.011%	157268	17	0.011%	157268	17	0.011%	157268	17	0.011%	157268	17	0.011%	157268	17	0.011%
36	157250	-1	-0.001%	157250	-1	-0.001%	157250	-1	-0.001%	157250	-1	-0.001%	157250	-1	-0.001%	157250	-1	-0.001%
37	157247	-4	-0.003%	157247	-4	-0.003%	157247	-4	-0.003%	157247	-4	-0.003%	157247	-4	-0.003%	157247	-4	-0.003%
38	157215	-36	-0.023%	157215	-36	-0.023%	157215	-36	-0.023%	157215	-36	-0.023%	157215	-36	-0.023%	157215	-36	-0.023%
39	157306	55	0.035%	157306	55	0.035%	157306	55	0.035%	157306	55	0.035%	157306	55	0.035%	157306	55	0.035%
40	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%
41	157234	-17	-0.011%	157234	-17	-0.011%	157234	-17	-0.011%	157234	-17	-0.011%	157234	-17	-0.011%	157234	-17	-0.011%
42	157263	12	0.008%	157263	12	0.008%	157263	12	0.008%	157263	12	0.008%	157263	12	0.008%	157263	12	0.008%
43	157247	-4	-0.003%	157247	-4	-0.003%	157247	-4	-0.003%	157247	-4	-0.003%	157247	-4	-0.003%	157247	-4	-0.003%
44	157248	-3	-0.002%	157248	-3	-0.002%	157248	-3	-0.002%	157248	-3	-0.002%	157248	-3	-0.002%	157248	-3	-0.002%
45	157270	19	0.012%	157270	19	0.012%	157270	19	0.012%	157270	19	0.012%	157270	19	0.012%	157270	19	0.012%
46	157255	4	0.003%	157255	4	0.003%	157255	4	0.003%	157255	4	0.003%	157255	4	0.003%	157255	4	0.003%
47	157240	-11	-0.007%	157240	-11	-0.007%	157240	-11	-0.007%	157240	-11	-0.007%	157240	-11	-0.007%	157240	-11	-0.007%
48	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%
49	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%
Total Deviation	-	-	**0.25%**	-	-	**0.23%**	-	-	**0.22%**	-	-	**0.24%**	-	-	**0.24%**	-	-	**0.25%**

Table 2 – Compactness Scores, Remedial Maps 1A-5A

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

Table 3 – County Split Metrics, Remedial Maps 1A-5A

	Enacted Map	Remedial Map 1A	Remedial Map 2A	Remedial Map 3A	Remedial Map 4A	Remedial Map 5A
Number of Counties Split	18	20	19	20	19	19
County-District Splitting	1.61	1.61	1.65	1.61	1.64	1.62
District-County Splitting	1.25	1.25	1.27	1.25	1.26	1.26

Table 4 – Partisan Performance by District and Plan, Remedial Maps 1A-5A

District	Enacted Map		Remedial Map 1A		Remedial Map 2A		Remedial Map 3A		Remedial Map 4A		Remedial Map 5A	
	Dem	*Rep*	*Dem*	*Rep*	*Dem*	*Rep*	*Dem*	*Rep*	*Dem*	*Rep*	*Dem*	*Rep*
2	40.62%	57.43%	40.28%	57.76%	40.28%	57.76%	40.79%	57.24%	40.79%	57.24%	40.62%	57.43%
5	56.73%	41.48%	54.58%	43.67%	56.73%	41.48%	54.98%	43.26%	56.73%	41.48%	56.73%	41.48%
7	33.65%	65.30%	34.65%	64.25%	33.65%	65.30%	34.33%	64.57%	33.65%	65.30%	33.65%	65.30%
8	39.79%	58.39%	38.10%	60.19%	37.32%	60.96%	36.87%	61.49%	36.87%	61.49%	39.79%	58.39%
9	40.35%	58.10%	40.94%	57.51%	40.57%	57.88%	40.94%	57.51%	40.57%	57.88%	40.35%	58.10%
12	45.61%	52.82%	47.87%	50.48%	45.61%	52.82%	47.55%	50.83%	45.61%	52.82%	45.61%	52.82%
13	34.96%	63.85%	35.54%	63.32%	35.68%	63.07%	35.67%	63.21%	36.35%	62.42%	34.25%	64.66%
16	38.49%	59.92%	39.92%	58.37%	42.15%	56.18%	40.76%	57.47%	41.59%	56.64%	40.64%	57.95%
17	49.36%	49.08%	50.52%	47.96%	50.52%	47.96%	50.83%	47.63%	50.83%	47.63%	49.36%	49.08%
20	35.17%	63.44%	35.46%	63.22%	35.46%	63.22%	35.12%	63.55%	35.12%	63.55%	35.17%	63.44%
31	44.13%	54.16%	43.59%	54.66%	43.98%	54.24%	43.49%	54.76%	43.43%	54.82%	44.13%	54.16%
# R/D Performing Districts	**1**	**8**	**1**	**8**	**1**	**8**	**1**	**8**	**1**	**8**	**1**	**8**

Table 5 – Comparison of Partisan Bias Metrics Across Plans, Remedial Maps 1A-5A

Plans	*Efficiency Gap*	*Declination*
Enacted Map	3.2% R	0.07 R
Remedial Map 1A	2.1% R	0.02 R
Remedial Map 2A	2.2% R	0.02 R
Remedial Map 3A	2.0% R	0.02 R
Remedial Map 4A	2.2% R	0.01 R
Remedial Map 5A	2.2% R	0.02 R

Table 6 – Core Population Retention Percentages, Remedial Maps 1A-5A

District	Remedial Map 1A	Remedial Map 2A	Remedial Map 3A	Remedial Map 4A	Remedial Map 5A
1	100.0%	100.0%	100.0%	100.0%	100.0%
2	86.6%	86.6%	90.1%	90.1%	100.0%
3	100.0%	100.0%	100.0%	100.0%	100.0%
4	100.0%	100.0%	100.0%	100.0%	100.0%
5	86.7%	100.0%	90.0%	100.0%	100.0%
6	100.0%	100.0%	100.0%	100.0%	100.0%
7	86.7%	100.0%	90.1%	100.0%	100.0%
8	71.0%	62.0%	60.3%	60.3%	100.0%
9	95.2%	98.0%	95.2%	98.0%	100.0%
10	100.0%	100.0%	100.0%	100.0%	100.0%
11	100.0%	100.0%	100.0%	100.0%	100.0%
12	86.8%	100.0%	90.1%	100.0%	100.0%
13	80.5%	86.5%	80.4%	85.1%	90.0%
14	62.2%	62.2%	60.5%	60.5%	51.3%
15	56.5%	56.6%	55.8%	55.9%	51.3%
16	55.3%	39.4%	47.8%	44.4%	86.0%
17	86.5%	86.5%	90.0%	90.0%	100.0%
18	100.0%	100.0%	100.0%	100.0%	100.0%
19	100.0%	100.0%	100.0%	100.0%	100.0%
20	86.5%	86.5%	90.0%	90.0%	100.0%
21	100.0%	100.0%	100.0%	100.0%	100.0%
22	100.0%	100.0%	100.0%	100.0%	100.0%
23	100.0%	100.0%	100.0%	100.0%	100.0%
24	100.0%	100.0%	100.0%	100.0%	100.0%
25	100.0%	100.0%	100.0%	100.0%	100.0%
26	100.0%	100.0%	100.0%	100.0%	100.0%
27	100.0%	100.0%	100.0%	100.0%	100.0%
28	100.0%	100.0%	100.0%	100.0%	100.0%
29	100.0%	100.0%	100.0%	100.0%	100.0%
30	100.0%	100.0%	100.0%	100.0%	100.0%
31	86.6%	86.6%	90.1%	90.1%	100.0%
32	100.0%	100.0%	100.0%	100.0%	100.0%
33	100.0%	100.0%	100.0%	100.0%	100.0%
34	100.0%	100.0%	100.0%	100.0%	100.0%
35	100.0%	100.0%	100.0%	100.0%	100.0%
36	100.0%	100.0%	100.0%	100.0%	100.0%
37	100.0%	100.0%	100.0%	100.0%	100.0%
38	100.0%	100.0%	100.0%	100.0%	100.0%
39	100.0%	100.0%	100.0%	100.0%	100.0%
40	100.0%	100.0%	100.0%	100.0%	100.0%
41	100.0%	100.0%	100.0%	100.0%	100.0%
42	100.0%	100.0%	100.0%	100.0%	100.0%
43	100.0%	100.0%	100.0%	100.0%	100.0%
44	100.0%	100.0%	100.0%	100.0%	100.0%
45	100.0%	100.0%	100.0%	100.0%	100.0%
46	100.0%	100.0%	100.0%	100.0%	100.0%
47	100.0%	100.0%	100.0%	100.0%	100.0%
48	100.0%	100.0%	100.0%	100.0%	100.0%
49	100.0%	100.0%	100.0%	100.0%	100.0%
Plan Average	**94.10%**	**94.9%**	**94.5%**	**95.2%**	**97.5%**

Nos. 23-35595 & 24-1602

IN THE 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,
and

JOSE TREVINO, ISMAEL G. CAMPOS, and State Representative ALEX YBARRA,
Intervenor-Defendants-Appellants

On Appeal from the United States District
Court for the Western District of Washington
No. 3:22-cv-05036
Hon. Robert S. Lasnik

PLAINTIFFS-APPELLEES' SUPPLEMENTAL EXCERPTS OF RECORD VOLUME 2 OF 5

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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' RESPONSE IN OPPOSITION TO PLAINTIFFS' REMEDIAL PROPOSALS

INTRODUCTION

The Court should reject all five of Plaintiffs' proposed remedial maps. In an attempt to circumvent the constitutional requirement that *any* map enacted by Washington's independent Redistricting Commission contain bipartisan compromise, *see* Wash. Const. art. II, § 43, Plaintiffs and their politically-aligned State/Defendant counterparts attempt to obtain through this Court what the Washington Constitution affirmatively denied them—an overtly partisan legislative map, *cf. Cooper v. Harris*, 137 S. Ct. 1455, 1490 (2017) (Alito, J., concurring in the judgment in part and dissenting in part) (warning that "federal courts will be transformed into weapons of political warfare" that "invite the losers in the redistricting process to seek to obtain in court what they could not achieve in the political arena."). In what can only generously be called a mockery of the

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Voting Rights Act ("VRA") and a condescending insult to Hispanic voters in Washington, in *all* of their five proposed remedial maps, Plaintiffs purport to cure an allegedly unlawful *dilution* of Hispanic voting strength by *further diluting* Hispanic voting strength—lowering the percentage of Hispanic citizens of voting age ("HCVAP") in the Yakima Valley VRA "opportunity" district in each and every one of their five proposals. If there were any doubt that Plaintiffs' objectives were to serve partisan aims rather than the VRA's anti-dilutive purposes, their proposed remedial maps dispel them.

Using the latest 2021 American Community Survey ("ACS") numbers from the U.S. Census Bureau, the enacted Legislative District 15 ("LD-15") contains an HCVAP of at least 52.4%. (*See* Expert Report of Sean P. Trende, Ph.D. (Trende Report), Dkt. # 251 at 16.) This majority-HCVAP district elected a Latina state senator, Nikki Torres, by a 35-point margin over her White opponent in the 2022 general election for this open seat, in the only contested legislative election hitherto held in the enacted LD-15. In a first-of-its-kind holding, the Court found that, despite containing a majority HCVAP and electing a Latina by 35 points, the enacted LD-15 did not afford an equal opportunity for Hispanic voters to elect a candidate of their choice. Because, evidently for Plaintiffs, the phrase "Hispanic Candidate of Choice" must be a synonym for "Democratic Candidate."

To those that espouse the same beliefs of Plaintiffs, the election of Nikki Torres by 35 points over a White Democratic candidate can only be explained by alleging the Hispanic voters were unlawfully denied the ability to elect their preferred candidate—either by racially discriminatory voting procedures or boundary lines. The Court's holding in this matter necessarily implies that the explanation *could not be* because Hispanic voters in Yakima knowingly participated in the franchise and elected Nikki Torres because they *actually preferred* her, or because she is a child of immigrant parents and worked in the fields and grew up in Yakima.[1] It

[1] *See* Ex. A, Email from Senator Nikki Torres to Washington Legislators, *A Request Regarding Redistricting* (Oct. 12, 2023, 1:03:27 PM PST). Senator Torres sent an email to all members of both Republican and Democratic Caucuses of the Washington House of Representatives and Senate. Intervenor-Defendant Representative Alex Ybarra is a member of the House Republican Caucus; as such, he received this email. It is attached hereto as Exhibit A and incorporated herein by reference.

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could not be explained by her giving birth to her first child as a teen and dropping out of high school, then fighting to get her GED, undergraduate and graduate degrees, and becoming a community leader. Her election cannot be explained by—despite all odds against her—her picking herself up by the bootstraps as a single mother and providing for her family. Her election could not be explained by the Hispanic voters in Yakima seeing themselves in her—the hopes and dreams of what their children could accomplish through dedication and hard work. No, based on Plaintiffs' legal arguments, Nikki Torres was only elected because the system was rigged through unlawful vote dilution.

Despite Plaintiffs' best efforts arguing otherwise, the VRA does not mandate the creation of Democratic districts wherever there is concentration of minority population. *See, e.g.*, *Baird v. Consol. City of Indianapolis*, 976 F.2d 357, 361 (7th Cir. 1992) ("The Voting Rights Act does not guarantee that nominees of the Democratic Party will be elected, even if [minority] voters are likely to favor that party's candidates."). Plaintiffs' proposed maps remove Hispanic voters from the Yakima "remedial" district and acceptance of any of Plaintiffs' five remedial proposals would compound that error by replacing them with Native American and White Democrats. The Court should reject Plaintiffs' five remedial proposals and call them what they are: a backdoor to elect more Democratic candidates regardless of demographics through exploiting and inverting the VRA—by challenging putative dilution of the Hispanic vote and then "remedying" that alleged dilution with *additional dilution*.

ARGUMENT

A. Plaintiffs' Remedial Proposals Fail for Legal Reasons.

The purpose of this Response is not to re-hash all of the reasons Plaintiffs' remedial maps are unnecessary. Intervenor-Defendants' legal position is simple—this Court should reject Plaintiffs' remedial maps because Plaintiffs failed to meet the required legal burden that is a prerequisite to a court requiring a minority "opportunity" district. *See generally Thornburg v. Gingles*, 478 U.S. 30 (1986). Intervenor-Defendants have discussed the myriad of reasons Plaintiffs' claims fall short—both in pre-and-post trial briefing—and incorporate those arguments

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by reference herein. (*See* Intervenor-Defs.' Tr. Br., Dkt. # 197; Intervenor-Defs.' Written Closing Argument, Dkt. # 215.)

However, it is worth noting that Plaintiffs still fail to show that the Court adopting any of their remedial maps would actually remedy their alleged injury—that enacted LD-15 does not provide Hispanic voters an equal opportunity to elect their candidate of choice. Said differently, Plaintiffs have failed to show that Nikki Torres would *not* be reelected to the state senate if she moved into one of their proposed remedial districts.

At trial, Plaintiffs contended that Nikki Torres's victory in the only contested endogenous election in enacted LD-15 was more evidence of racially-polarized voting. *See, e.g.*, Trial Tr. 76:1-76:20. Yet now at the remedial phase, Plaintiffs' experts fail to show that Nikki Torres would not still be elected in any of their remedial districts, even if her share of the Hispanic vote was as small as their experts contended at trial. *See, e.g.*, Trial Ex. 2 at 4.

The Redistricting Commission reached a compromise that LD-15 would be a majority HCVAP district, but would lean Republican. *See, e.g.*, Trial Tr. 476:17-477:1, 747:16-23, 279:6-23. Despite drawing a district that all head-to-head partisan metrics showing that Republicans enjoyed only a 2-point advantage (*see, e.g.*, Trende Report, Dkt. # 251 at 33), Senator Torres defeated the Democratic candidate by a whopping 35 points. This margin of victory would be more than sufficient to overcome the roughly 12- to 15-point Democratic advantage in Plaintiffs' proposed remedial districts. (*See* Trende Report, Dkt. # 251 at 33, 55.) Yet Plaintiffs' remedial experts fail to explain or account for this "Nikki Torres Effect," much less show if it is even possible to draw a district in the Yakima region that would not again elect Republican Nikki Torres. Thus, their claim should be dismissed for lack of standing. *See, e.g.*, *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (explaining that "the Plaintiff bears the burden" to establish redressability at all "successive stages of the litigation"); *see also* Trial Tr. 89:11-17 (Plaintiffs' expert Dr. Collingwood explained that he had no idea if it was even possible to draw a majority-Hispanic district that both performs for Democratic candidates and keeps the Yakama Nation intact).

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B. Plaintiffs' Remedial Proposals Fail for Practical Reasons.

The Court's Memorandum of Decision in this case addresses Hispanic Voting strength in the Yakima Valley. (*See* Dkt. # 218.) Notwithstanding the limited geographical scope of the Court's ruling, Plaintiffs decided to swing for the fences to see just how far they can exploit the Court's ruling to benefit State Democrats. While one cannot fault Plaintiffs for lack of ambition, their fealty to geography and traditional redistricting principles is another matter. Although it would be impossible to detail every instance in Plaintiffs' proposed remedial maps where they try to gain a partisan advantage outside of the Court's decision regarding a Yakima Valley district, what follows are some illustrative examples that shows their recommendations cannot be trusted.

1. "Curing" Hispanic Vote Dilution by Further Diluting the Hispanic Population.

Plaintiffs' proposed remedial districts rest on something of a paradox: while purporting to remedy dilution of Hispanic voting strength, every single one of the proposals actually dilutes Hispanic voting strength *further*. The table below compares the HCVAP proportion of enacted LD-15 to the estimated HCVAP proportion of each of the remedial districts in Plaintiffs' Proposals 1 through 5:

Map	District	HCVAP (2021 ACS)
Enacted Plan	LD-15	52.6%
Plaintiffs' Proposal 1 and 2	LD-14	51.7%
Plaintiffs' Proposal 3 and 4	LD-14	50.2%
Plaintiffs' Proposal 5	LD-14	46.9%

(*See* Trende Report, Dkt. # 251 at 67.) By claiming that their five proposals—each of which *lowers* the HCVAP in the relevant district—will "remedy the VRA violation for Latino voters in the Yakima Valley region and provide all voters in the region equal electoral opportunity" (Dkt. # 245 at 1-2), Plaintiffs are proposing to replace Hispanic Republican voters with White Democratic voters, impliedly insisting that Hispanic voters can only elect their candidates of choice with the help of more White Democrats.

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As independent-minded Latino voters, Intervenors Trevino, Ybarra and Campos categorically reject this approach by Plaintiffs, which makes a mockery of the VRA. The VRA cannot possibly demand further dilution to remedy the alleged dilution, and Plaintiffs have not cited a single case in which a court has *ever* accepted such a remedy-dilution-with-more-dilution proposal.

2. Cascading Changes to Districts Outside the Scope of the Court's Order.

Although Plaintiffs only alleged the Enacted Plan violated the VRA with respect to *one* legislative district in South Central Washington, Plaintiffs' Remedial Proposals 1 through 4 would adjust the boundaries for 20 percent or more of the state's legislative districts, across not just South Central Washington but Western Washington, North Central Washington and Eastern Washington too, affecting the *majority* of Washington counties and moving upwards of half a million Washingtonians into new legislative districts. (*See* Trende Report, Dkt. # 251 at 6-15, 41-50.)

The following table shows how many legislative districts would be altered, how many counties affected and how many Washington residents moved to new districts in each of Plaintiffs' Remedial Proposals 1 through 4:

Plaintiffs' Proposal	Districts Changed	Counties Affected	Population Moved
Proposal 1	14	28	574,251
Proposal 2	11	21	506,922
Proposal 3	13	28	531,551
Proposal 4	10	21	476,440

(*See id.*)

Many of the redrawn districts in Plaintiffs' proposed remedial maps bely even a cursory understanding of Washington geography. As anyone flying into Washington can readily observe, the state is bisected by a rugged mountain range. While one district must transverse the Cascade Mountains in order to obtain an equal population across legislative districts as required by law, *see* Wash. Const. art. II, § 43(5), since statehood there has only ever been one such district, and always the district containing Skamania and Klickitat Counties, *see* Ex. B, Trial Ex. 1061 at 180-97. The

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Enacted Plan represents the first-ever legislative map with a trans-Cascade district outside Southwest Washington. There are practical realities for this—most of the Cascade Mountains lie within federally-protected National Parks or National Forests, which would create a "population desert" between the western and eastern portions of a trans-Cascade district, needlessly expanding the geographic size of such a district. And as any Washingtonian knows, there are only a few highway passes that connect Western and Eastern Washington, which are often challenging and time-consuming to cross in winter months (and in some cases, like Chinook Pass through Highway 410, closed entirely[2]), making such a district difficult to represent effectively. Despite this reality, Plaintiffs' Proposals 1 through 4 needlessly create multiple trans-Cascade districts. In addition to maintaining most of the Enacted Plan's boundaries for Legislative District 12 (stretching from Wenatchee to Monroe), Proposals 1 through 4 extend Legislative District 17 from Vancouver all the way east to Goldendale, creating a second trans-Cascade district. (*See* Dkt. # 245-1 at 5-9.) And Proposals 2 and 4 extend Legislative District 13 from Moses Lake and Ephrata all the way to Enumclaw (over Chinook Pass, which is typically closed for six months per year), creating a three trans-Cascade districts in those maps. (*See* id. at 7, 9.)

3. Hispanic Populations That Are Far-Flung and Distant From One Another.

Dr. Trende's expert report points out that the Hispanic population in Plaintiffs' proposed remedial districts are far-flung and distant from one another, thereby violating *Gingles*'s mandate that the minority populations must be compact. *See LULAC v. Perry*, 548 U.S. 399, 433 (quoting *Bush v. Vera*, 517 U.S. 952, 997 (1996) ("The first Gingles condition refers to the compactness of the minority population, not to the compactness of the contested district.")).

Dr. Trende shows that, in their Proposals 1 and 2, Plaintiffs' remedial district is drawn in a way that captures nearly all the high-HCVAP neighborhoods in both Yakima and Pasco (two cities that are themselves 85 miles apart) while avoiding nearly all the White neighborhoods in

[2] *See, e.g.*, Press Release, Washington State Department of Transportation, SR 410/Chinook Pass and SR 123 Cayuse Pass Close for the Season (Nov. 14, 2023), https://wsdot.wa.gov/about/news/2023/sr-410-chinook-pass-and-sr-123-cayuse-pass-close-season ("Typically, SR 410 Chinook Pass and SR 123 Cayuse Pass reopen in late May . . . .").

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those cities. (*See* Trende Report, Dkt. # 251 at 26-27.) Likewise, the boundaries of District 14 in these two maps encompass nearly all the majority-Hispanic voting districts along the Yakima River while avoiding nearly all the majority-White voting districts. (*See id.* at 28.) Dr. Trende's dot density maps also graphically show how the Hispanic population of District 14 in Proposals 1 and 2 is dispersed throughout Yakima, Pasco and the Yakima River Valley connecting the two (*see id.* at 29-32), leading him to conclude that "the district stitched together discrete clusters of minority groups to achieve the 50% + 1 threshold," rather than there being "a compact minority population at the core of the district." (*Id.* at 21-22.)

Given the minimal differences between Plaintiffs' remedial district in Proposals 3 and 4 (compared to their remedial district in Proposals 1 and 2) with respect to precincts in the Yakima, Pasco and the Yakima River Valley areas, Dr. Trende also concludes that "the same analysis from Maps 1 and 2 applies" with respect to the remedial district in Proposals 3 and 4. (*Id.* at 54.)

4. Playing Political Games with Political Performance of Legislative Districts.

"The Voting Rights Act does not guarantee that nominees of the Democratic Party will be elected, even if [minority] voters are likely to favor that party's candidates." *Baird*, 976 F.2d at 361. Intervenor-Defendants have continually argued that Plaintiffs' VRA claims were an attempt "to obtain in court what they could not achieve in the political arena"—or in this case, through Washington's bipartisan redistricting process. *Cooper*, 137 S. Ct. at 1490 (Alito, J., concurring in the judgment in part and dissenting in part) (*see also, e.g.*, Dkt. # 215 at 51). Plaintiffs' proposed remedial maps show that Intervenor-Defendants' fears were well founded.

In addition to shifting the partisan tilt of the challenged district (enacted LD-15) from an average of -1.8% Democratic to +12.5% Democratic (using "Total Vote, 2016-2020" metric) in the remedial districts of their Proposals 1 and 2, and +12.0% Democratic in Proposals 3 and 4 (*see* Trende Report at 33, 55), Plaintiffs' proposals make several other partisan changes that are both unnecessary and one-sided. For example, under Plaintiffs' Proposals 1 and 2, "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." (*Id.* at 33.) Under

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Proposals 3 and 4, "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." (*Id.* at 55.) "More dramatically, District 17 moves from a district where . . . the Republican has won by 0.9% on average to one where the Democrat has won by 1.4% on average" using the "DRA elections" metric. (*Id.* at 34.) Likewise, under Proposals 3 and 4, District 17 "is made even more Democratic." (*Id.* at 55.) Both Districts 12 and 17 "are presently represented by Republicans" in the state senate and both state house seats in each district. (*Id.* at 34.) But, as Dr. Trende points out, such partisan changes to districts beyond the remedial district "could have been avoided rather easily," through slightly different adjustments by the map-drawer. (*Id.* at 34-35.)

Even more troubling, Dr. Trende's analysis concludes that there are no countervailing partisan shifts in Plaintiffs' proposed maps that might "make a Democratic incumbent appreciably more vulnerable." (*Id.* at 34.) In other words, not only are Plaintiffs seeking "to obtain in court" an additional Democratic legislative district in the Yakima area that their political allies "could not achieve" at the Redistricting Commission, *Cooper*, 137 S. Ct. at 1490 (Alito, J., concurring in the judgment in part and dissenting in part), but they are now using the remedial process to seek to turn two other legislative districts—one in North Central Washington and one in Southwest Washington—into majority-Democratic districts. If successful, this would result in six additional Democratic state representatives and three additional Democratic state senators (in addition to the two additional Democratic state representatives and additional Democratic state senator elected from the remedial district in each of Plaintiffs' remedial proposals).

5. Playing More Political Games with Incumbent Legislators.

The Supreme Court has acknowledged that traditional redistricting principles include "preserving the cores of prior districts and avoiding contests between incumbent[s]." *Karcher v. Daggett*, 462 U.S. 725, 740 (1983). Yet Plaintiffs' five remedial proposals would wreak havoc on incumbents far removed from enacted LD-15. According to Dr. Trende's analysis, each of Plaintiffs' map proposals would imperil numerous current Republican legislators by moving them into Democratic districts or pitting them against other Republican incumbents. (*See* Trende Report,

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Dkt. # 251 at 38-40, 59-60, 66; *see also* Dkt. # 248 at 2-4.) In contrast, not a single incumbent Democratic legislator is moved into a new district, placed in a safely Republican district or paired against an incumbent Democrat. (*See id.*) The table below summarizes these effects:

Legislator	LD	Party	Chamber	Proposal	Change(s)
Stephanie Barnard	8	R	House	1, 2, 3, 4	Moved to LD-16 with Reps. Klicker & Rude
Brad Hawkins	12	R	Senate	1, 3	Moved to LD-7 with Sen. Short
Curtis King	14	R	Senate	1, 2, 3, 4	Moved to LD-5 which is not on ballot until 2026
Chris Corry	14	R	House	1, 2, 3, 4, 5	Moved to LD-15 with Reps. Chandler & Sandlin (Maps 1-4); moved to LD-13 with Reps. Dent & Ybarra (Map 5)
Gina Mosbrucker	14	R	House	1, 2, 3, 4, 5	Moved to LD-17 with Reps. Harris & Waters (Maps 1-4); moved to LD-16 with Reps. Klicker & Rude (Map 5)
Nikki Torres	15	R	Senate	1, 2, 3, 4	Moved to LD-16 with Sen. Dozier
Bruce Chandler	15	R	House	5	Moved to safely Dem. LD-14
Bryan Sandlin	15	R	House	5	Moved to safely Dem. LD-14
Phil Fortunato	31	R	Senate	1, 3	Moved to safely Dem. LD-5
Drew Stokesbary	31	R	House	1	Moved to safely Dem. LD-5

(*See id.*)

Many of these shifts appear gratuitous and intentional. In Plaintiffs' Proposals 1 through 4, Senator Curtis King is drawn out of his current district by less than one mile, as is Representative Gina Mosbrucker in Proposals 3 and 4. Representative Chris Corry is left 1.5 miles outside of his current district in Proposals 1 through 4, and just *one-third* of a mile away in Proposals 5. Even more egregiously in Proposal 5, LD-15 Representative Bruce Chandler is moved into a neighboring district by a mere *500 feet*. His seatmate, Representative Bryan Sandlin, is treated similarly, ending up only one-half of a mile outside his current district, despite living in an extremely sparsely populated area on the north slope of the Yakima River Valley. Lastly, in Plaintiffs' Proposal 1, House Minority Leader Drew Stokesbary (who is also, as Plaintiffs have

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pointed out, undersigned counsel, *see* Dkt. # 64 at 3) sees his *neighborhood* in South Auburn split in half, with his residence ending up one-half mile outside his current district. (*See also* Trende Report, Dkt. # 251 at 39-40.)

6. Ignoring the Commission's First-Ever Tribal Consultation Policy.

For the first time in the history of the Redistricting Commission, it adopted a formal tribal consultation policy. *See* Ex. C, Trial Ex. 1060; *see also* Washington State Redistricting Commission, 2021 Redistricting Commission Tribal Consultation Policy (Apr. 12, 2021), *available at* https://rdcext.blob.core.windows.net/public/Communications_and_Outreach/Tribal Consultation/Tribal Consultation Policy - Adopted.pdf. Pursuant to this policy, the Commission engaged in formal, government-to-government discussions with the Yakama Nation. *See, e.g.*, Ex. E at 2, Email from Lisa McLean, Executive Director, Washing State Redistricting Commission, to Redistricting Commissioners (Aug. 6, 2021, 11:21:49 AM PDT). In the course of these discussions, the Yakama Nation "urge[d] the Redistricting Commission to reject any legislative map that divides the Yakama Reservation into separate representative districts[,]" and to "reject any legislative mapping that demonstrably 'cracks' the indigenous voting population located south of the Yakama Reservation in Klickitat and Skamania Counties[,]" where "many enrolled members reside on off-Reservation trust parcels, at traditional family homesteads, or in communities near the usual and accustom[ed] fishing sites along the Columbia River." Ex. D at 5, Letter from Delano Saluskin, Chairman, Yakama Nation Tribal Council, to Sarah Augustine, Chair, Washington State 2021 Redistricting Commission (Jun. 3, 2021). At a tribal consultation meeting with the Redistricting Commission on August 4, 2021, the Yakama Nation presented a slide deck which included a request that the "2021 Redistricting Maps Should Provide For Single Representation Between The Yakima & Columbia R[ivers]." Ex. E at 22, Presentation by Yakama Nation Tribal Council to Washington State Redistricting Commission (Aug. 4, 2021). In a letter to the Commission during their final negotiations, the Yakama Nation indicated they "specifically favor[ed] elements of Commissioner Graves' proposed Legislative District 14," including those that "incorporate[d] Yakama members living in established tribal communities off-Reservation

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and on federal trust property along the Columbia River" and "include[d] critical natural resource management areas for the protection of adjacent forests and rivers." Ex. F at 7-8, Letter from Delano Saluskin, Chairman, Yakama Nation Tribal Council, to Sarah Augustine, Chair, Washington State 2021 Redistricting Commission (Nov. 4, 2021). Notably, consistent with the Yakama Nation's formal request, Commissioner Graves' proposed map of District 14 extended from the Yakima to Columbia River. *See* Ex. G.

None of Plaintiffs' maps extend the same government-to-government courtesy to the Yakama Nation as Commissioner Graves, and eventually the Commission. District 14 in Plaintiffs' Proposals 1, 2 and 5 only extend to the southern border of the Yakama Reservation, not all the way to the Columbia River at White Salmon as in the Enacted Plan (and LD-14 does not reach any part of the Columbia River in their Proposal 5). (*See* Dkt. # 245-1.) In Proposals 3 and 4, District 14 extends further down the Columbia River (though still not all the way to White Salmon like the Enacted Plan), but District 17 protrudes from Clark County east to Goldendale, bisecting much of the Yakama Nation's usual and accustomed hunting and fishing grounds and placing several off-Reservation trust parcels and traditional family homesteads in a separate legislative district from the Yakama Reservation. (*See id.*)

7. Ignoring the Commission's Extensive Public Comments.

While Plaintiffs' map-making misadventures are too numerous to catalogue comprehensively, Intervenor-Defendant Alex Ybarra is uniquely impacted by one such example. In Plaintiffs' Proposals 2 and 4, Legislative District 13, which Rep. Ybarra represents in the State House, is extended westward across the Cascade Mountains all the way to Enumclaw. (*See* Dkt. # 245-1.) In addition to the obvious logistical challenges of representing a district crossing Chinook Pass, *see supra* note 2, this configuration is somewhat similar to the configure by Commissioner Paul Graves, *see* Ex. G, which received swift and severely negative feedback. Not only does this configuration of District 13 exemplify Plaintiffs' ignorance of Washington's geography and other traditional redistricting principles, it also illustrates their disregard for the Commission's

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bipartisan, good-faith negotiating process that included tremendous efforts to incorporate public feedback and produce maps receptive to the needs of Washington.

CONCLUSION

For the foregoing reasons, the Court should reject *all* of Plaintiffs' remedial proposals, which purport to "remedy" voter dilution through additional dilution. Here, the proposed cure is not merely worse than the disease—it is, quite literally, more of the alleged disease itself. And despite the narrow holding of the Court regarding LD-15, Plaintiffs are now attempting to use the remedial process to further trample the constitutionally-mandated work of the Redistricting Commission and score political wins (outside the scope of the Court's holding) through this Court and distortions of the VRA, as opposed to engaging in the required bipartisan process so clearly outlined in the Washington Constitution.

* * *

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DATED this 22nd day of December, 2023.

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I certify that this memorandum contains 4,193 words, in compliance with the Local Civil Rules.

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-mapsgerrymandee`; 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`

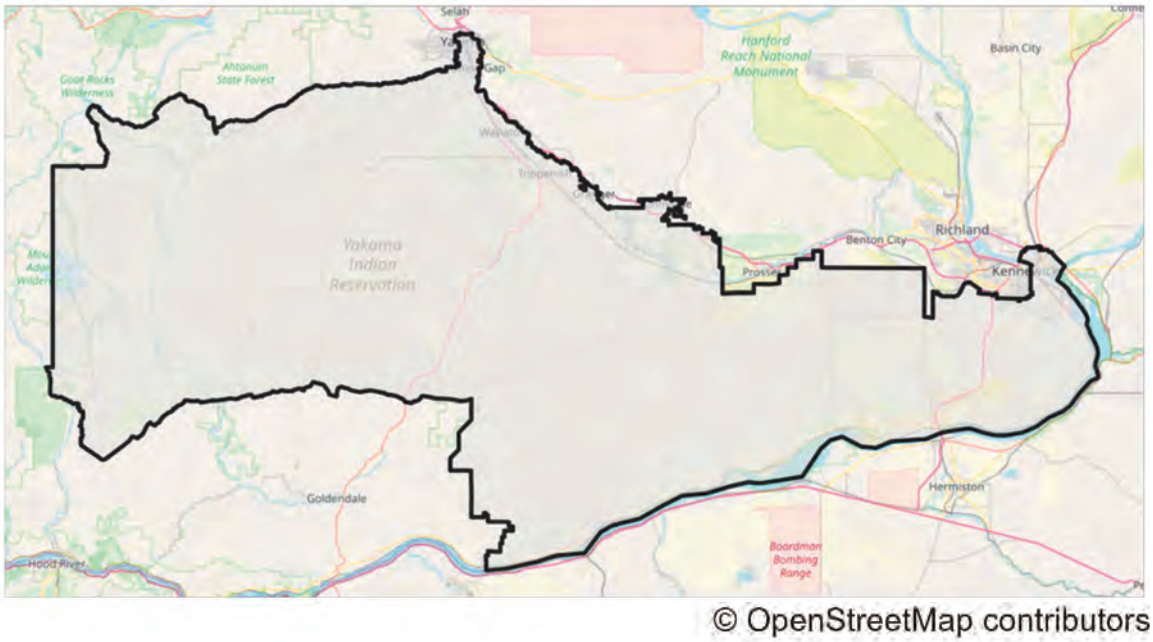
3 Analysis of Remedial Maps 1 and 2

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

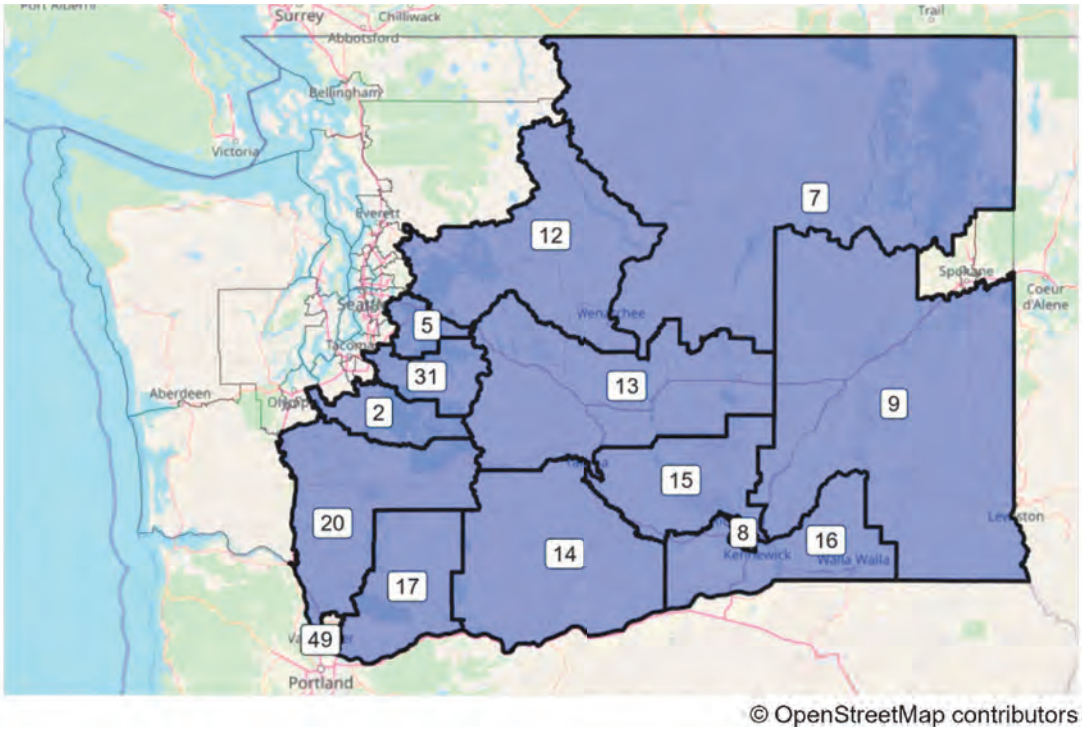


This district combines populations from Yakima, Pasco, and several small towns along the Yakima River.

3.1.1 Remedial Map 1

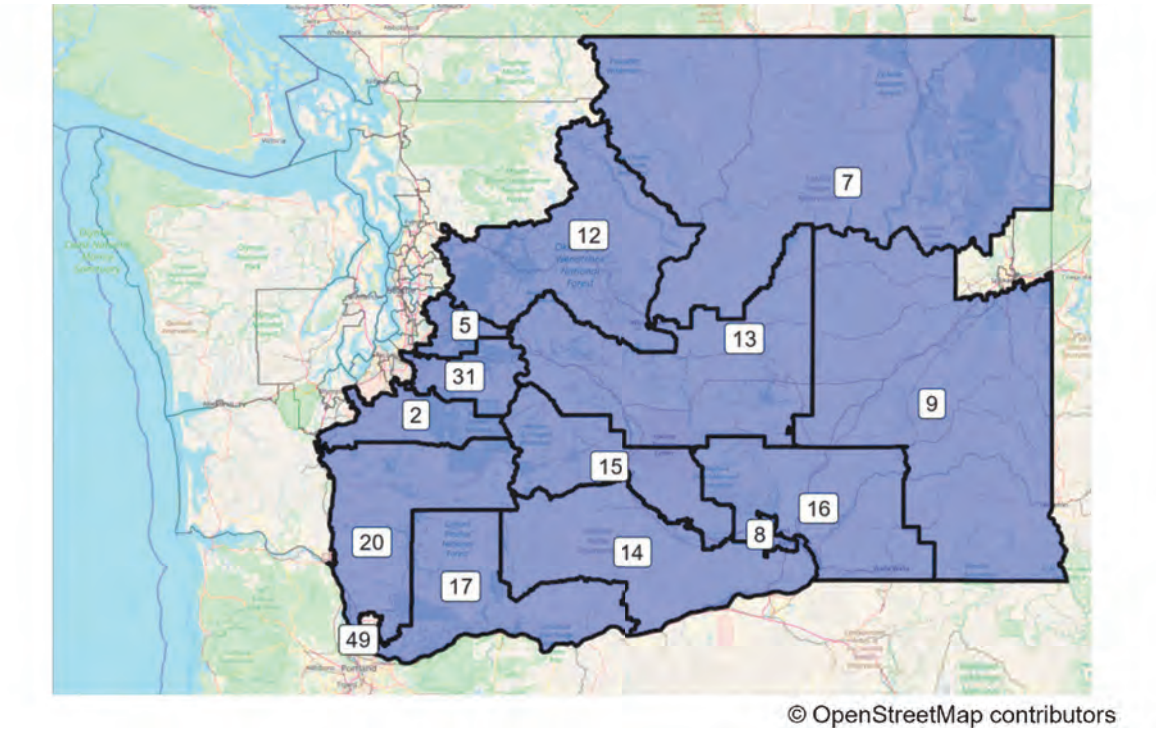
Remedial Map 1, however, includes a cascade of changes that extend beyond the borders of the proposed remedial VRA district (which has been renumbered to 14 in all remedial maps). Figure 2, for example, shows which of the districts in the Enacted Map are changed in Remedial Map 1. Overall, 14 districts,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

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



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

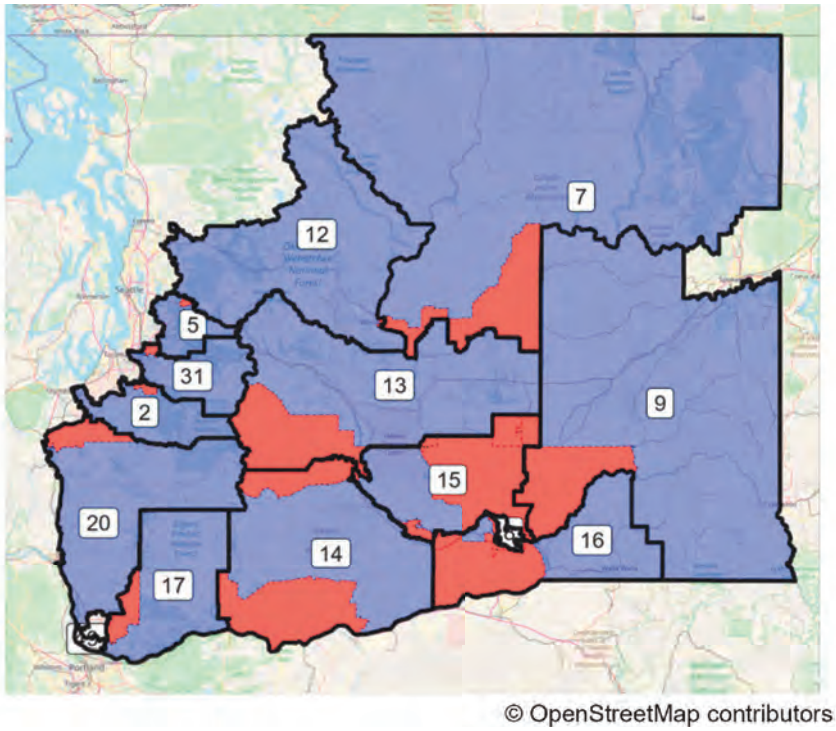
Figure 3: Remedial Map 1, with Districts Altered from Enacted Map Highlighted



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 blocks[1] that are shifted between districts from the Enacted Plan to the remedial plan by highlighting them in red.

[1]The 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



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.

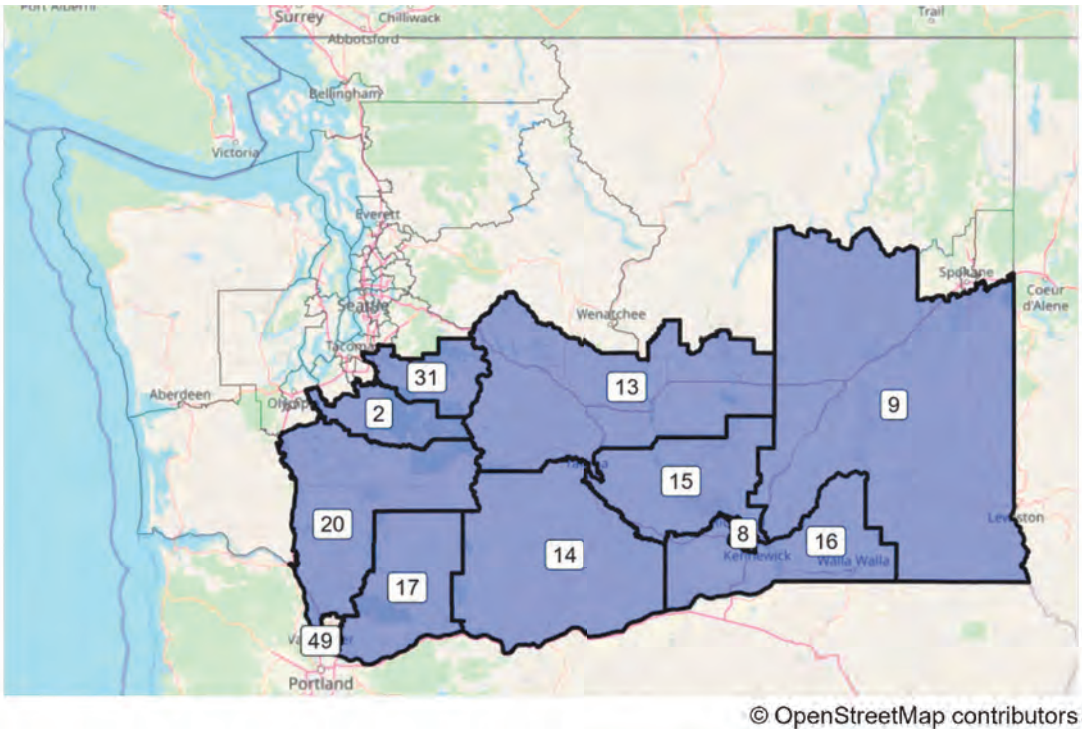
Districts Moved Into and Out of Counties, Enacted vs. Remedial 1

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

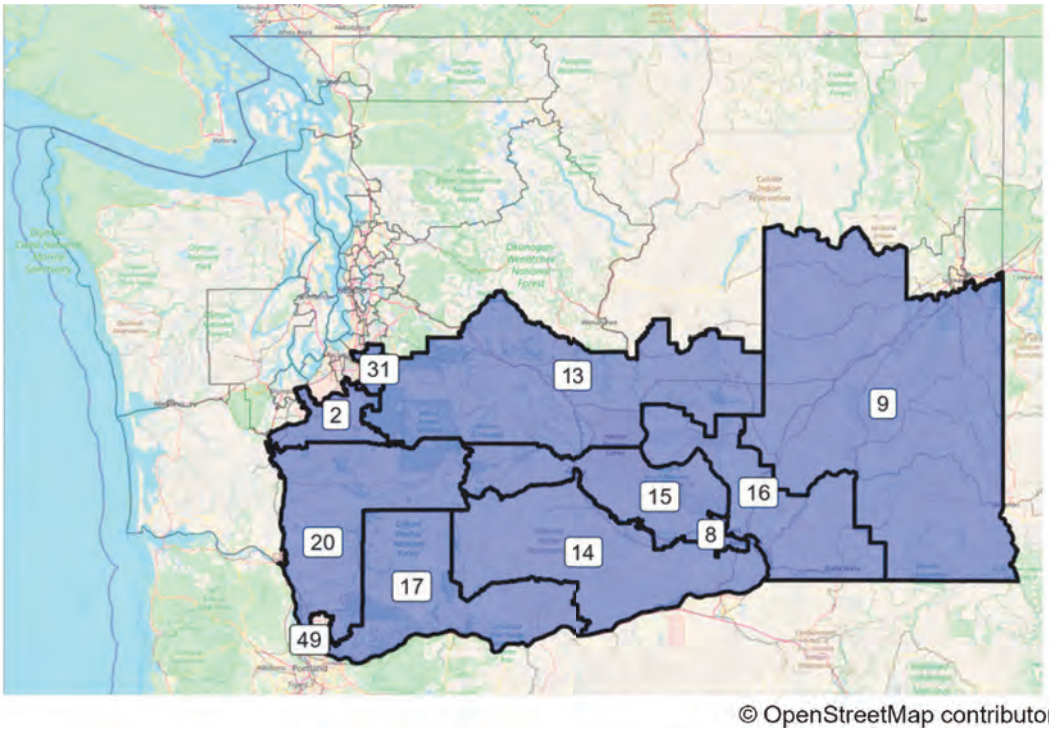
Remedial Map 2 alters fewer districts than does Remedial Map 1. Figure 5 shows which of the districts in the Enacted Map are changed in Remedial Map 2. Overall, the boundaries of 11 districts, or 22.4% of the districts in the state, are altered in Remedial Map 2.

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



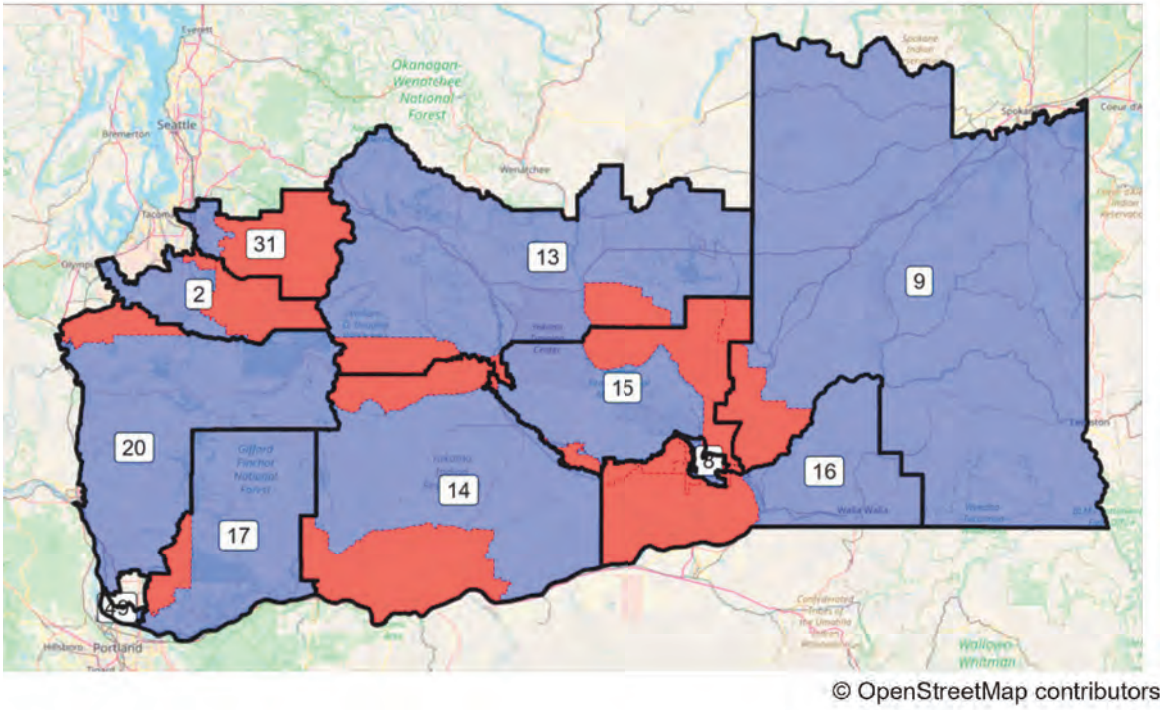
Similarly, Figure 6 shows the districts in Remedial Map 2 with the districts that were altered from the Enacted Map highlighted.

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



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



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 x 12.5%), 375 to Block B (1,000 x 37.5%) and 500 to Block C (1,000 x 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 caluclated 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. Oskoii'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

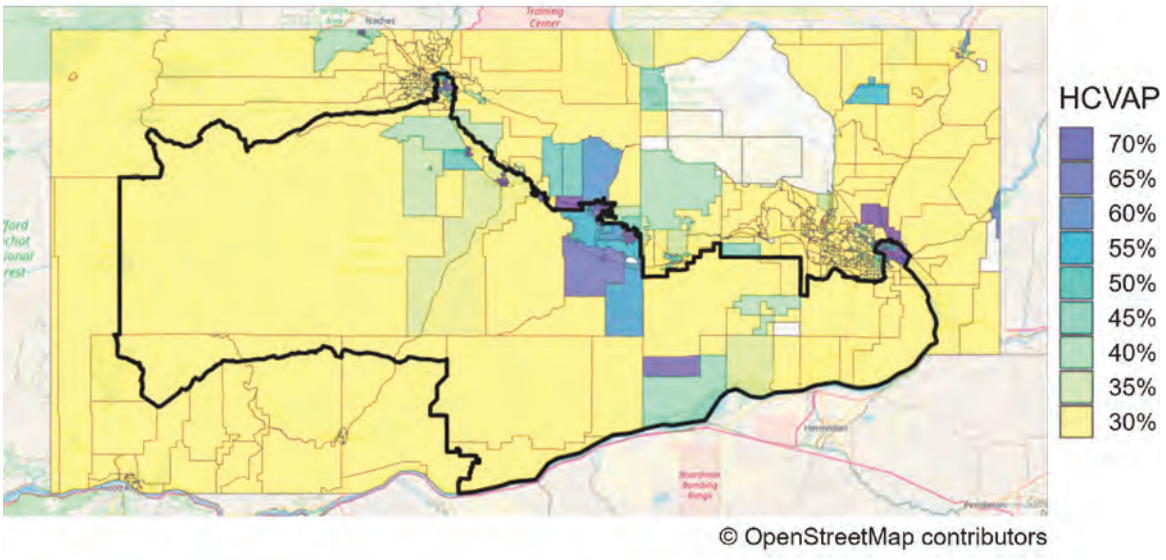
population at the core of the district, or whether the district stitched together discrete clusters of minority groups to achieve the 50% + 1 threshold.

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 area 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.

[2]VTDs 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

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

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

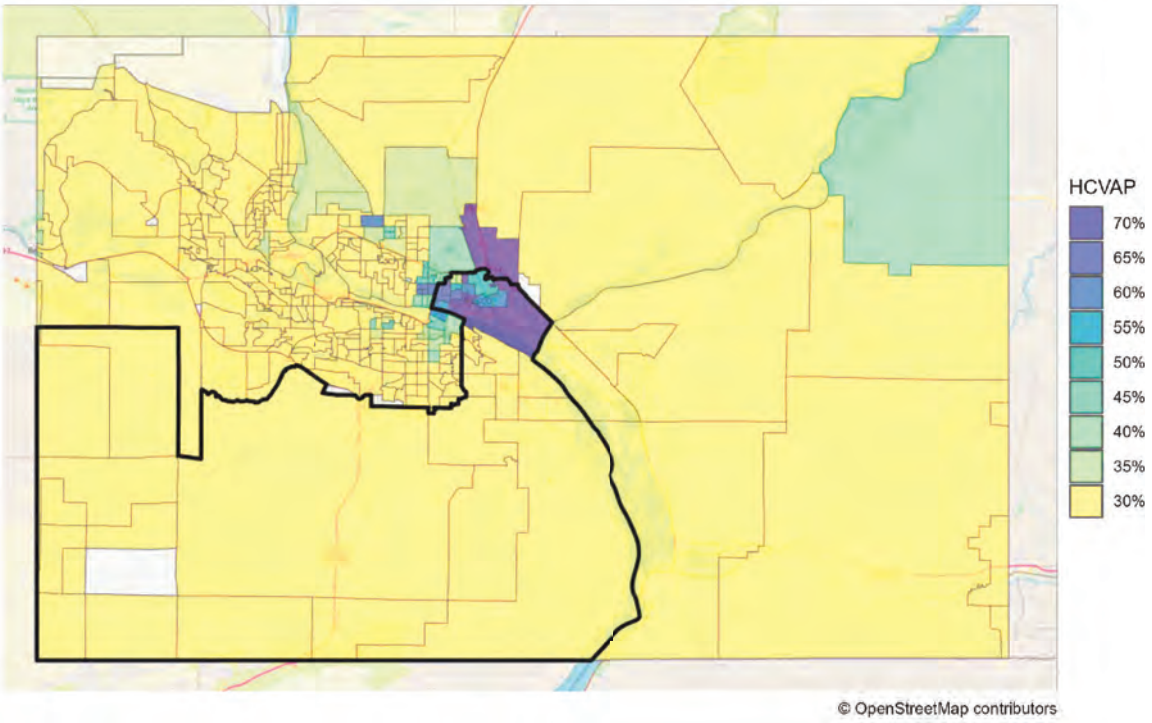
in District 14. Finley is to the South of Pasco; District 14 crosses it in order to reach Pasco. White Swan is located in the heart of the Yakima Indian reservation and is overwhelmingly Native America. On the other hand, the 14th includes every majority-Hispanic city in the three counties, with the 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
1	15	Cliffdell	0.00%
2	15	Nile	0.92%
3	15	Naches	1.06%
4	15	Gleed	9.77%
5	15	Summitview	10.00%
6	15	Tampico	10.19%
7	15	Eschbach	11.42%
8	14	White Swan	14.74%
9	15	Terrace Heights	15.31%
10	15	Selah	18.14%
11	15	Ahtanum	19.18%
12	15	Yakima	22.34%
13	15	Cowiche	22.37%
14	15	Buena	23.00%
15	14	Parker	26.69%
16	15	Donald	33.88%
17	14	Union Gap	34.51%
18	15	Zillah	34.69%
19	15	Moxee	38.29%
20	14	Yakima	47.99%
21	14	Harrah	52.95%
22	15	Tieton	68.88%
23	14	Grandview	72.77%
24	14	Sunnyside	73.27%
25	14	Wapato	73.37%
26	14	Toppenish	79.14%
27	14	Granger	82.74%
28	15	Outlook	89.47%
29	14	Mabton	94.55%
30	14	Ahtanum	—
31	14	Tampico	—
—	—	—	—

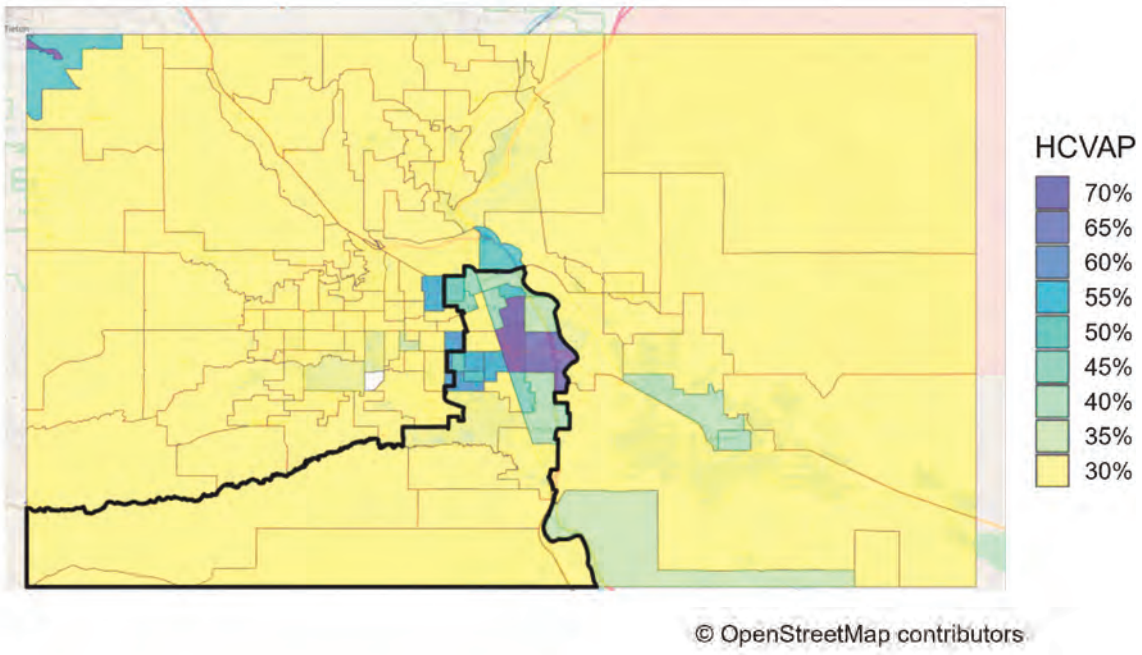
You can see this better in the following maps, which zoom in on Pasco and Yakima:

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



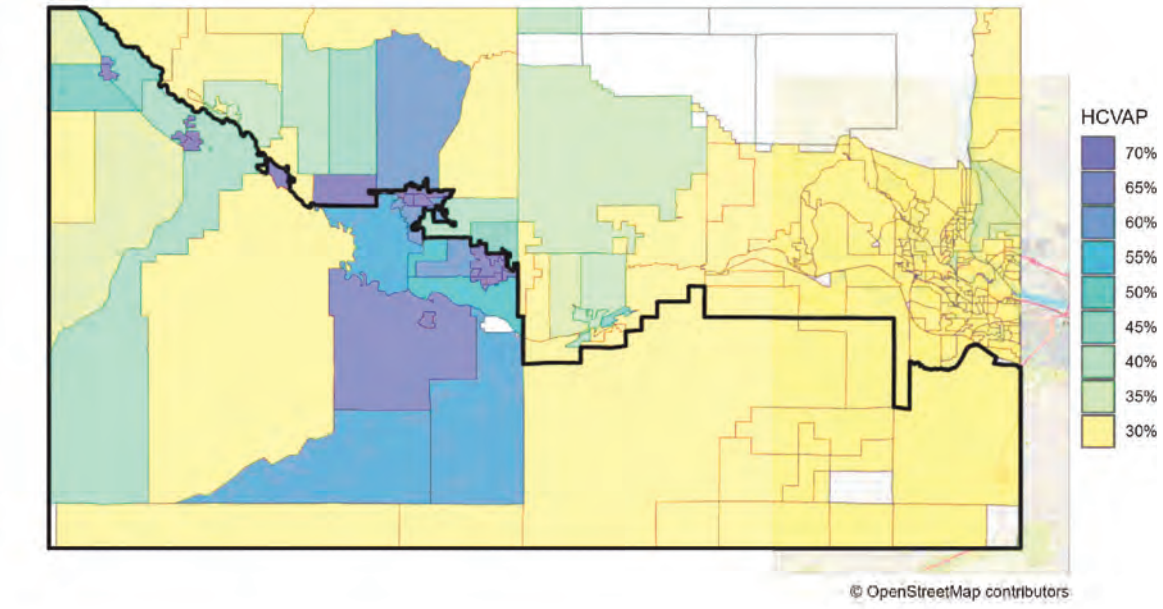
12 of the 18 majority Hispanic VTDs are placed in District 14 in the area depicted above, along with 23 of the 286 non-majority Hispanic VTDs.

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



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



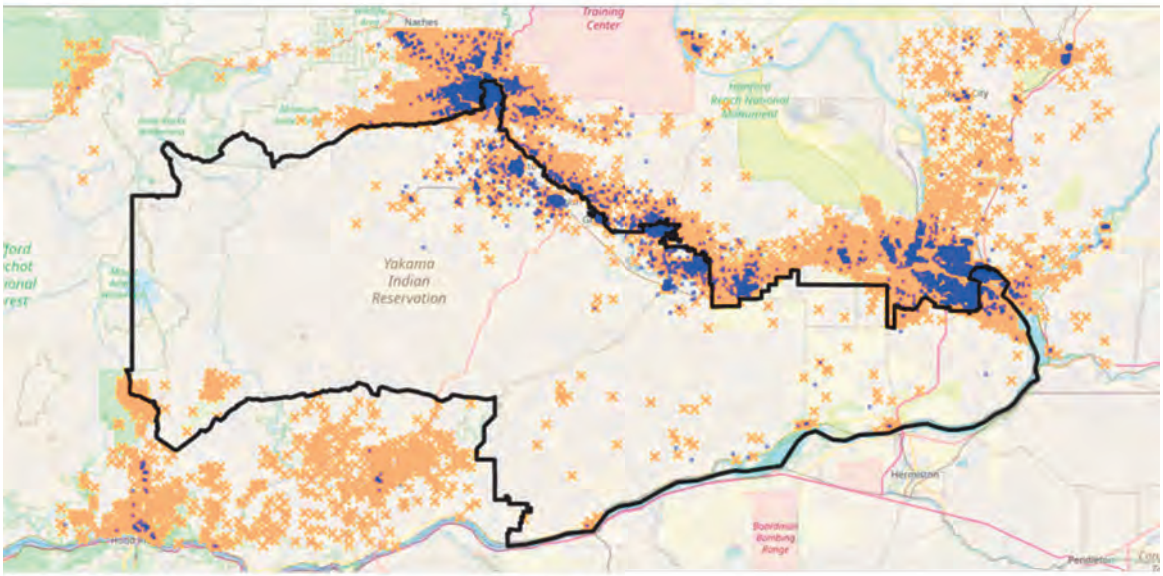
28 of the 31 majority Hispanic VTDs are placed in District 14 in the area depicted above, along with 21 of the 210 non-majority Hispanic VTDs.

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.

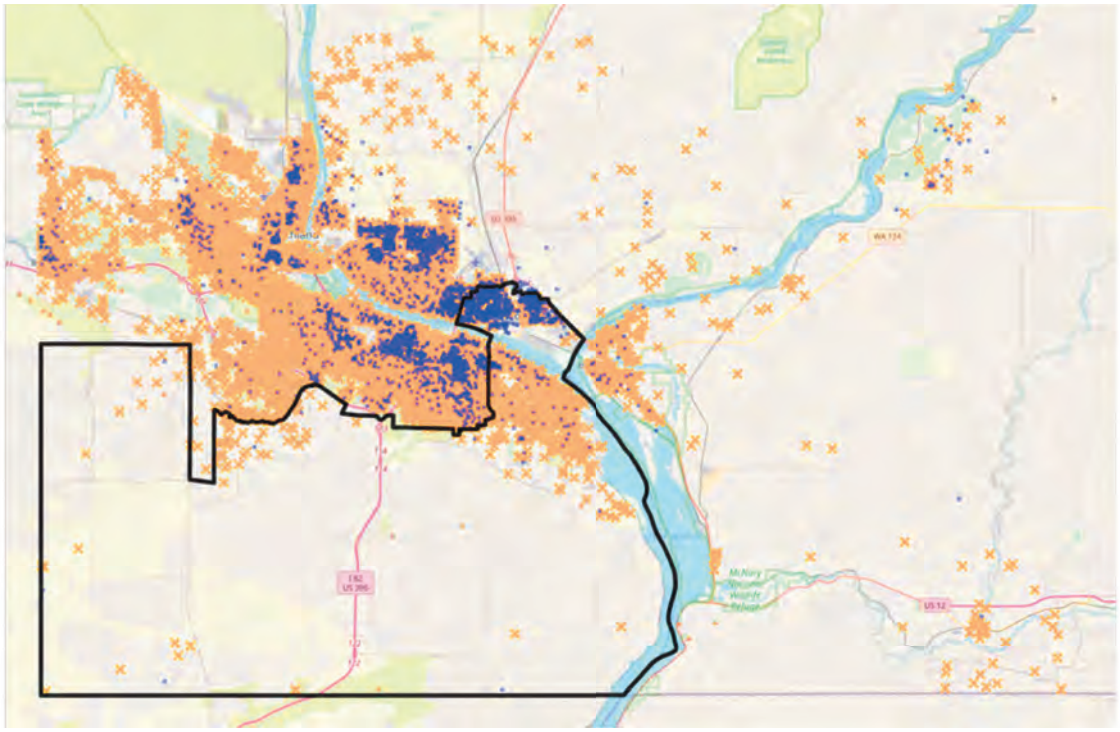


Figure 14: Dot Density Map of Population, Remedial Maps 1 and 2, District 14, in the Yakima area. Here, one blue dot represents 10 Hispanic citizens of voting age, one orange x represents 10 White citizens of voting age, and one purple + represents 10 citizens of voting age of other races.

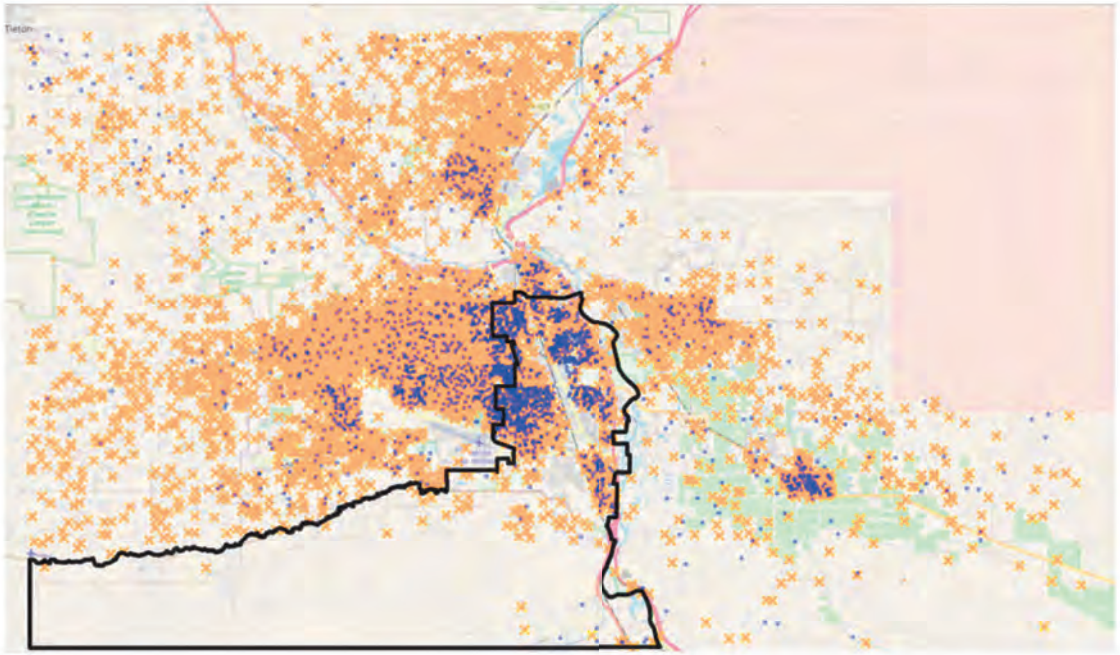
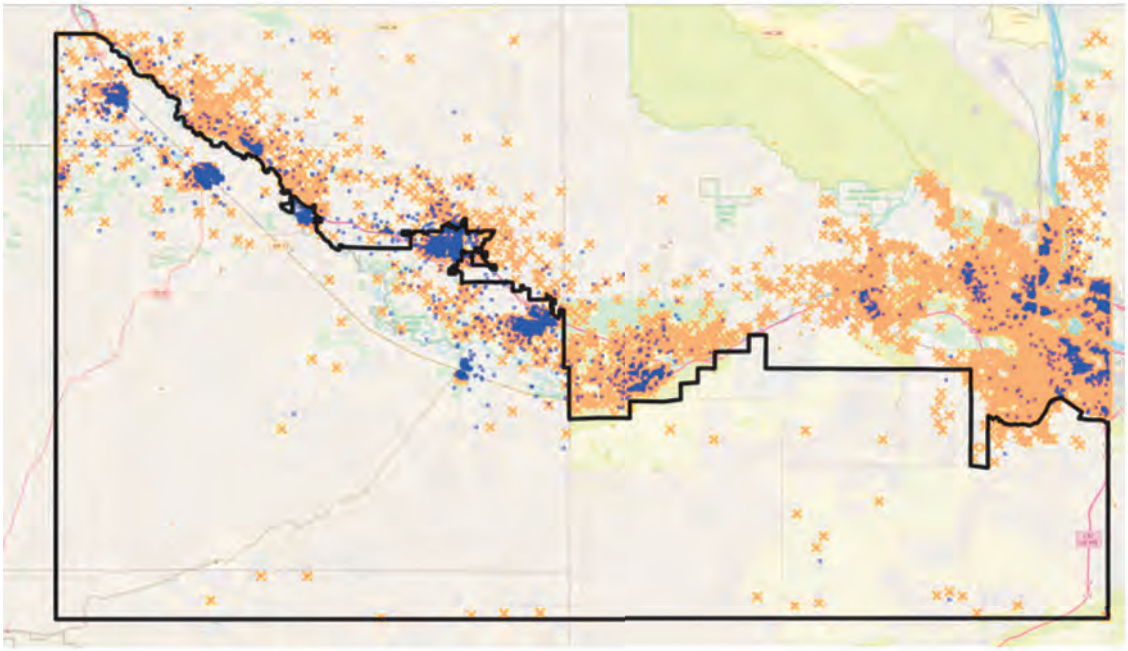


Figure 15: Dot Density Map of Population, Remedial Maps 1 and 2, District 14, in the Yakima River area. Here, one blue dot represents 10 Hispanic citizens of voting age, one orange x represents 10 White citizens of voting age, and one purple + represents 10 citizens of voting age of other races.



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 left. 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%

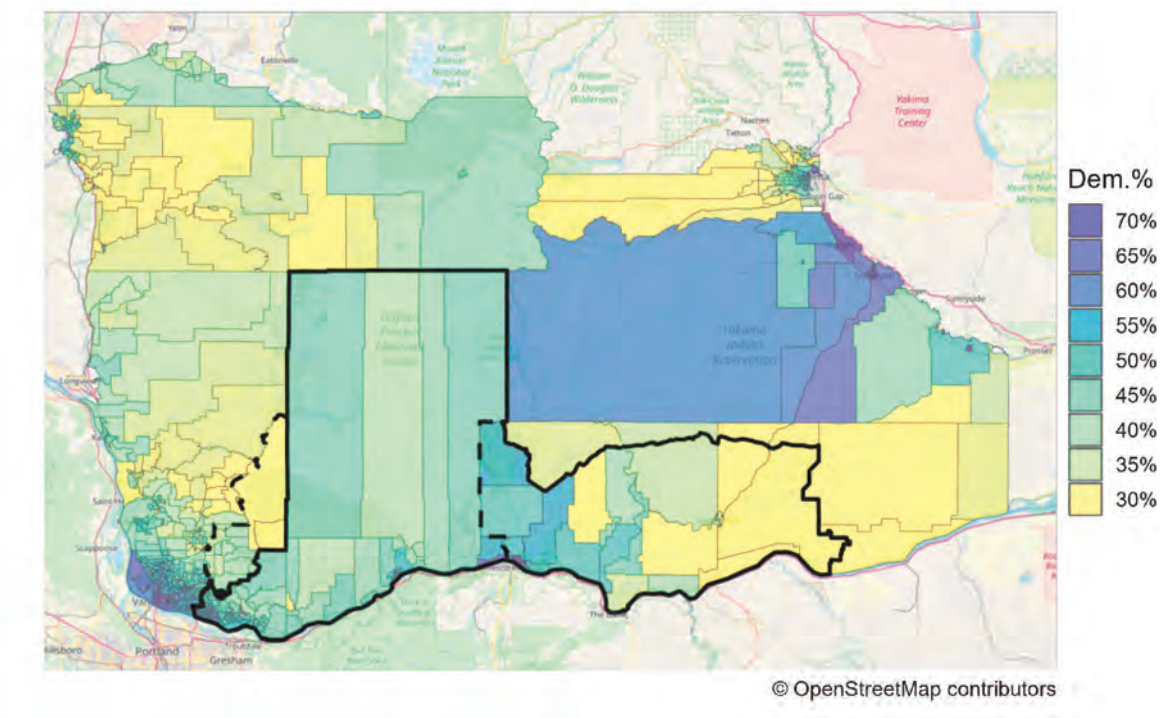
As you can see, the map creates effects beyond simply transforming District 14 into a more Democratic district (and District 15 into a more reliably Republican one). District 12, which always voted for the Republican candidate under the Enacted Map, is transformed into a district where the Republican 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.

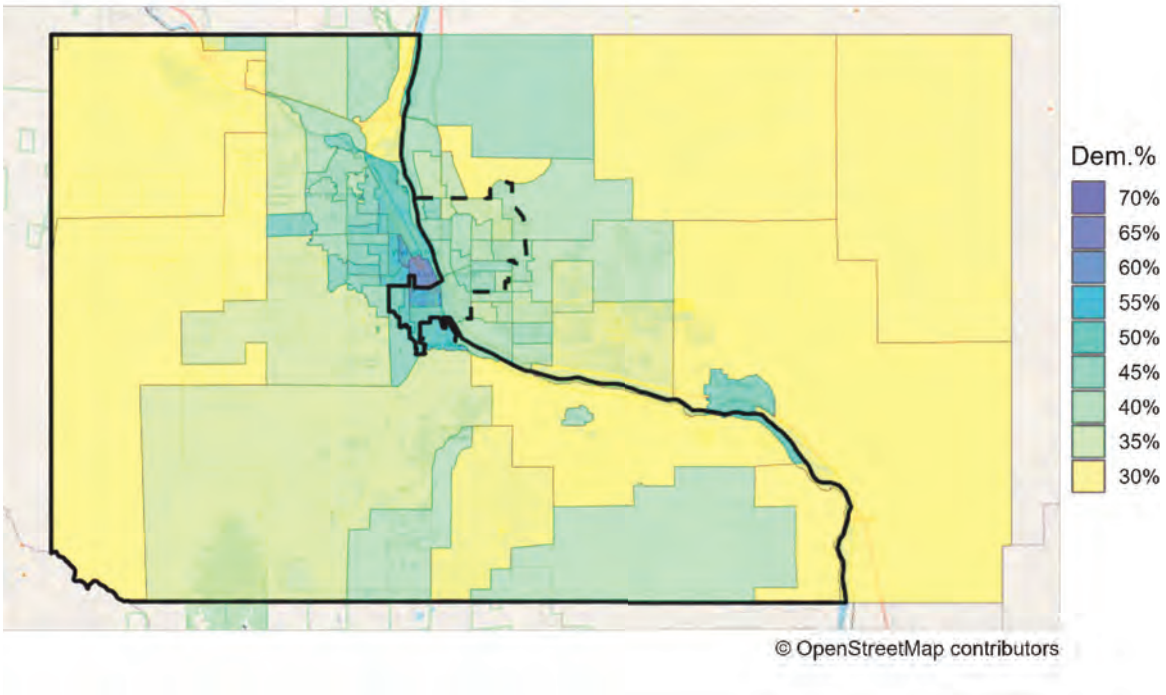
Both of these districts are presently represented by Republicans. There do not appear to be any examples of countervailing shifts that would make a Democratic incumbent appreciably more vulnerable. This could have been avoided rather easily. As you can see from below, District 17 expands into slightly 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



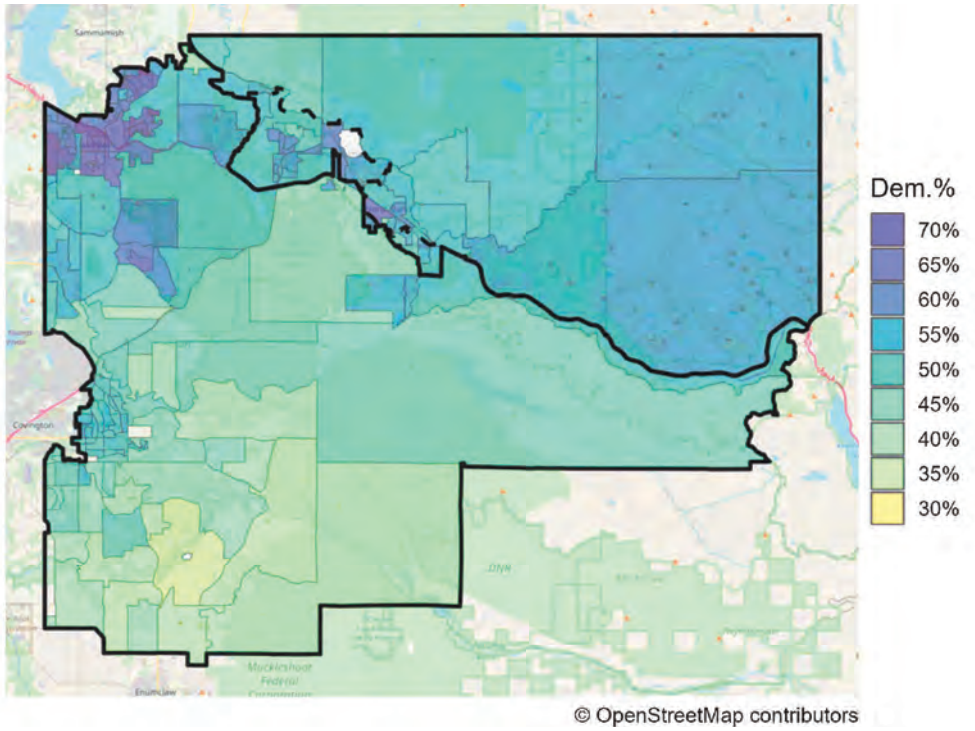
Likewise, District 12 is shifted leftward by excising from District 12 Republican-leaning East Wenatchee (60.4% Republican, using DRA's composite), where incumbent Republican Senator Brad Hawkins lives, along with two marginally Republican precincts and a Democratic precinct from Wenatchee itself; the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

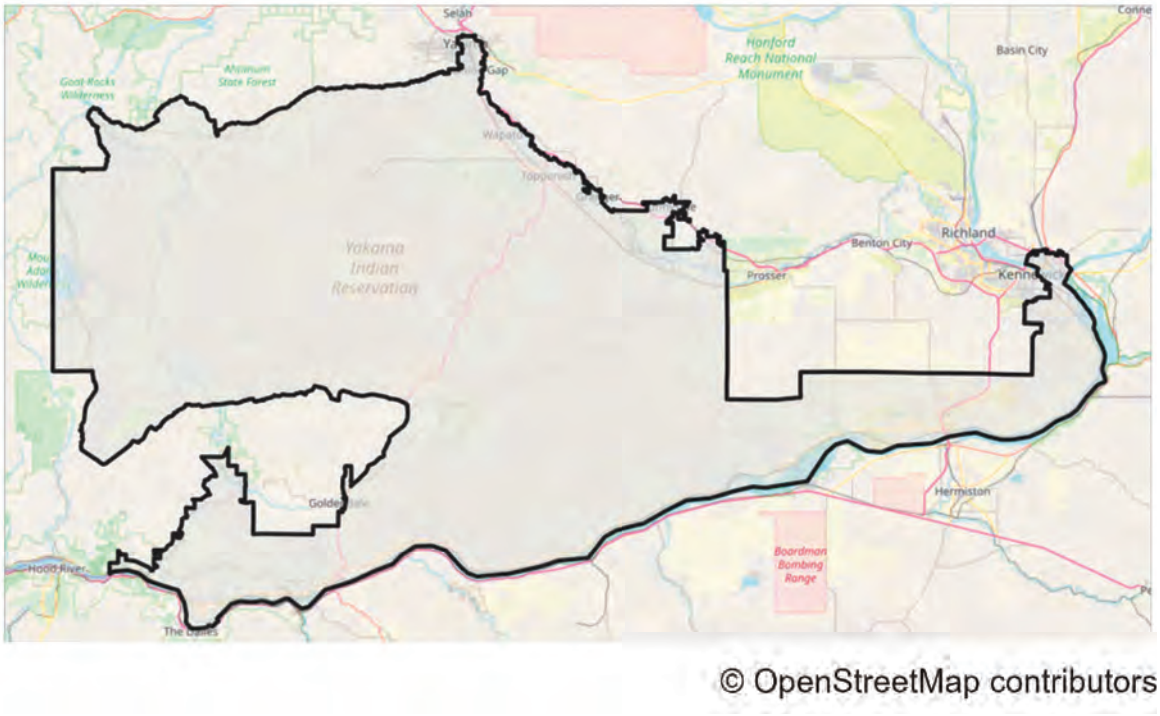
4 Analysis of Remedial Maps 3 and 4

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:

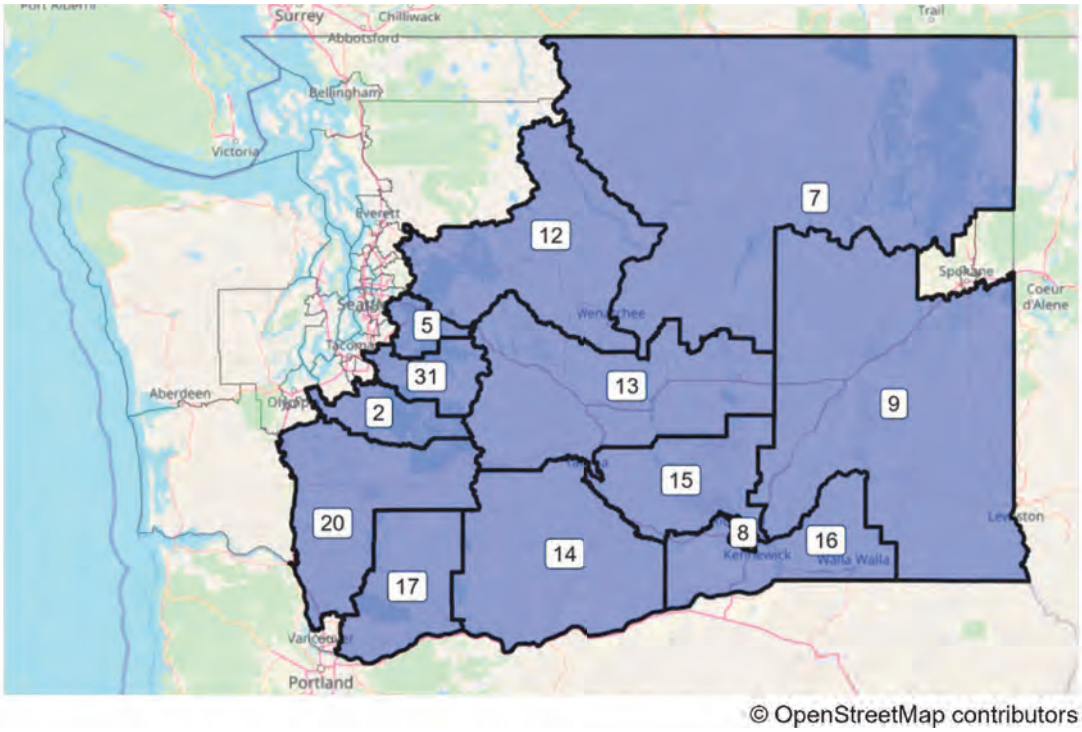
Figure 19: Proposed VRA District in Remedial Maps 3 and 4



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.

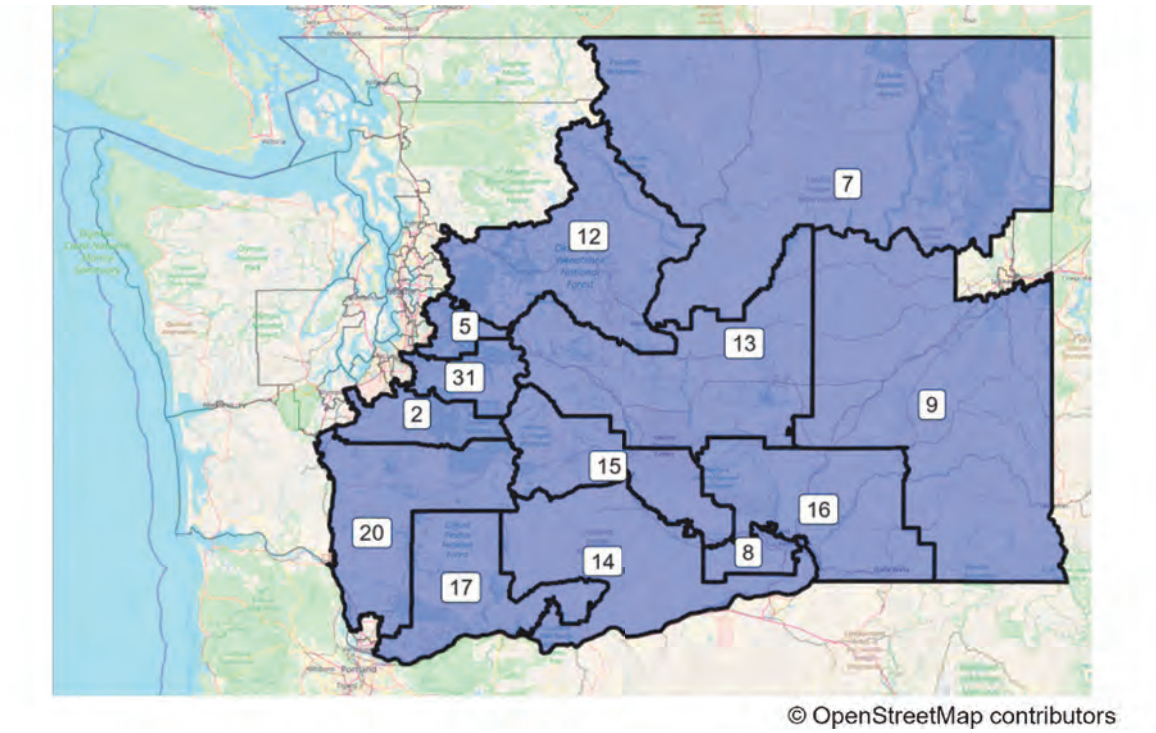
Like Remedial Maps 1 and 2, Map 3, involves second and third-order changes that extend well beyond the scope of District 14. Here, for example , are the Enacted Districts that are changed in Remedial Map 3.

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



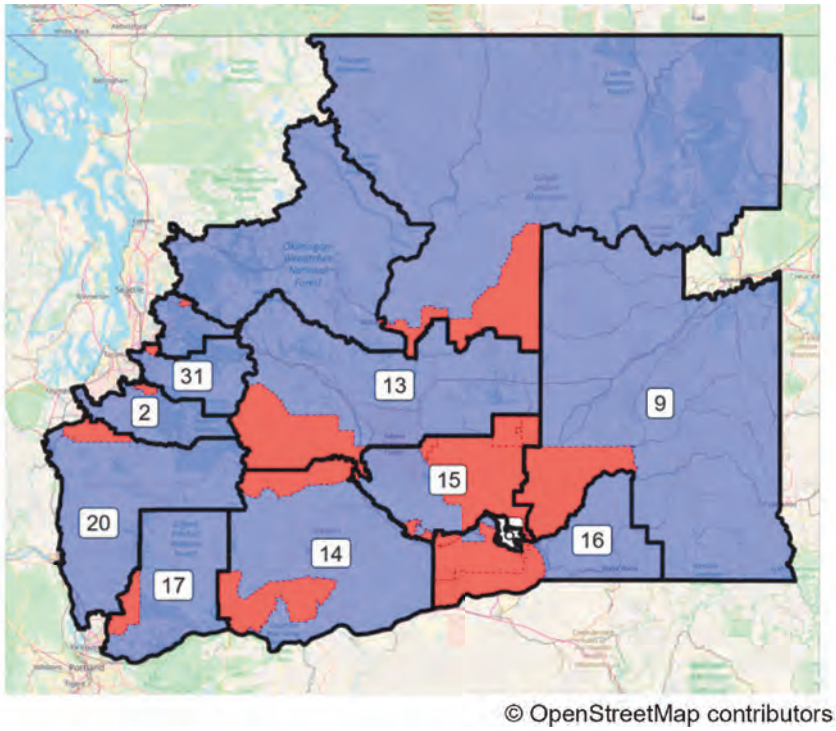
The boundaries of 13 districts are changed, or 26.5% of the districts in the state. The changed districts ultimately look like this:

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



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



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

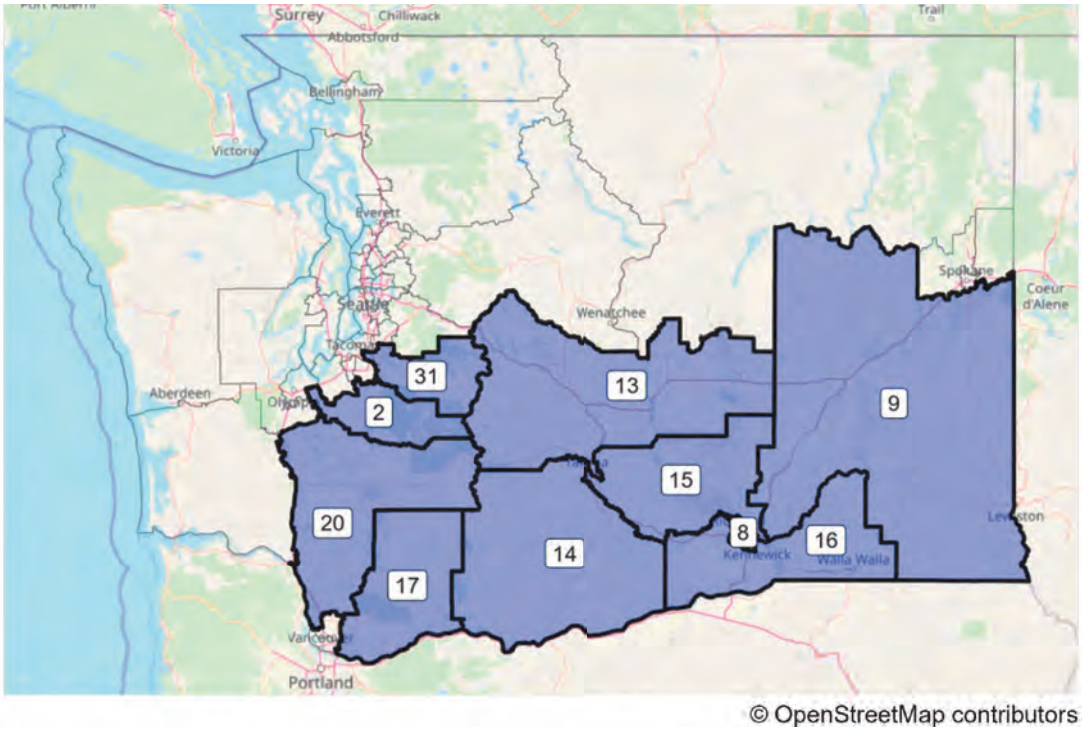
In total, the map moves 531,551 individuals around, including 213,350 residents who do not reside in Enacted Districts 14, 15 or 16 and 113,230 residents who do not reside in either Enacted Districts 14, 15 or 16 or in Remedial Districts 14, 15 or 16.

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

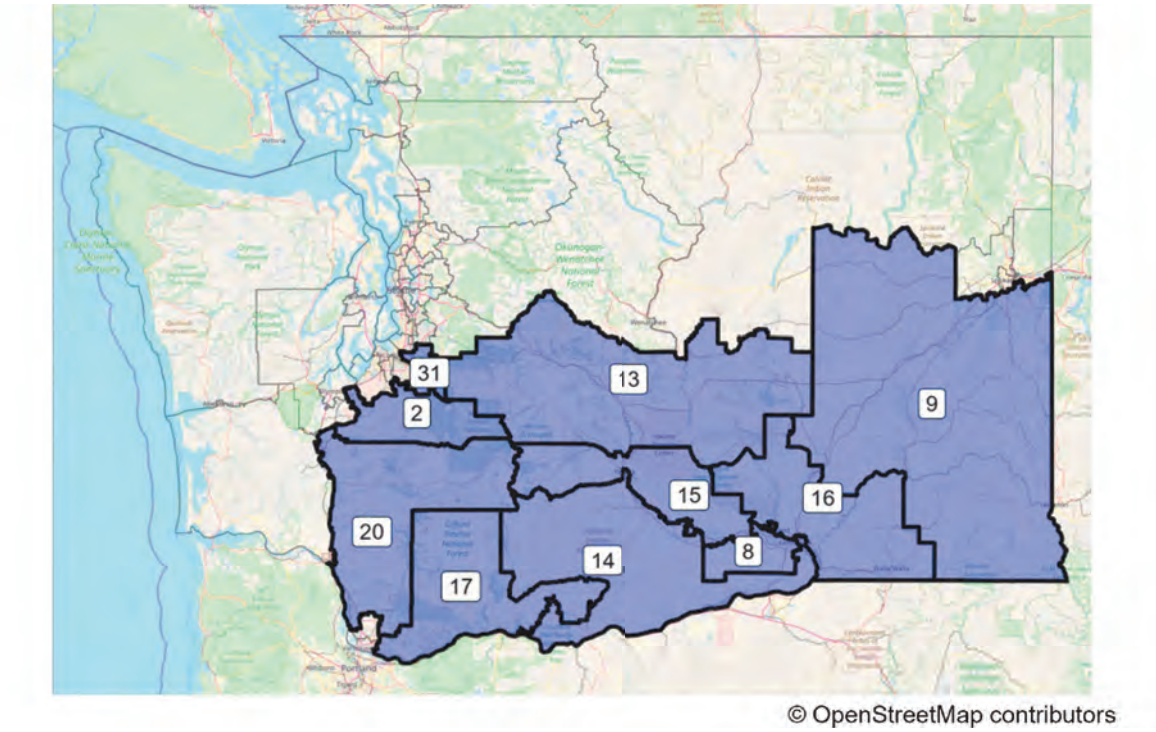
notable. The Enacted Districts that are changed in Remedial Map 4 are highlighted below:

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



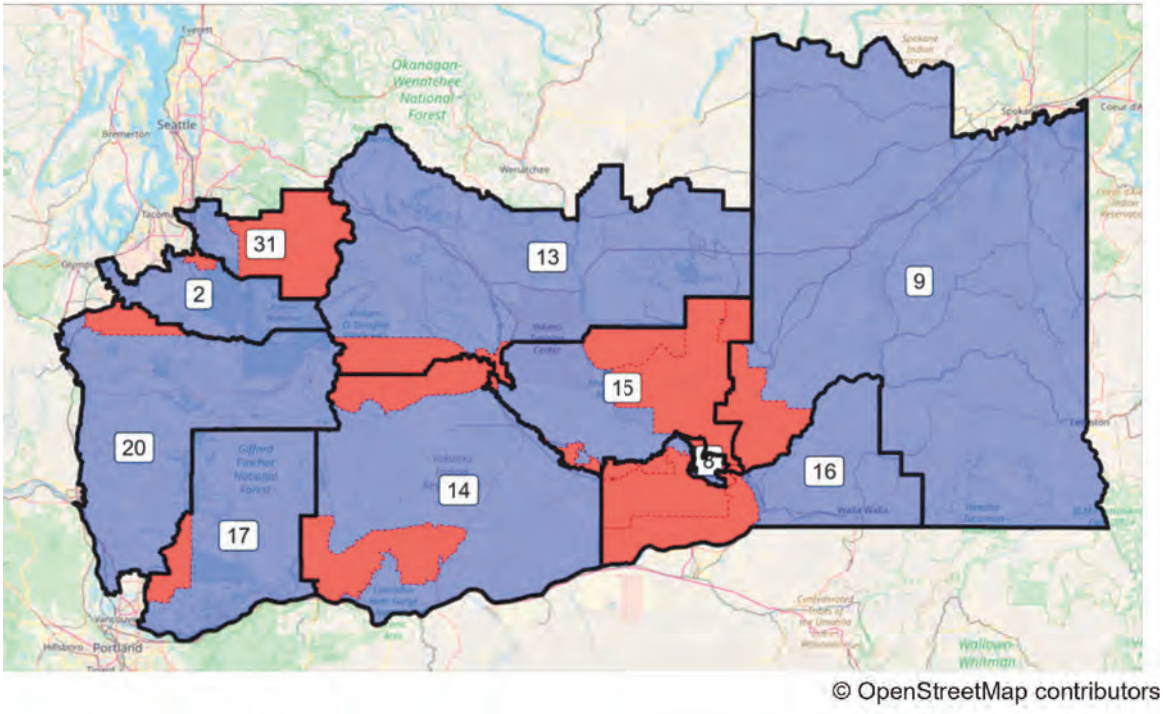
The boundaries of 10 districts are changed, or 20.4% of the districts in the state. The changed districts ultimately look like this:

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



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



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.

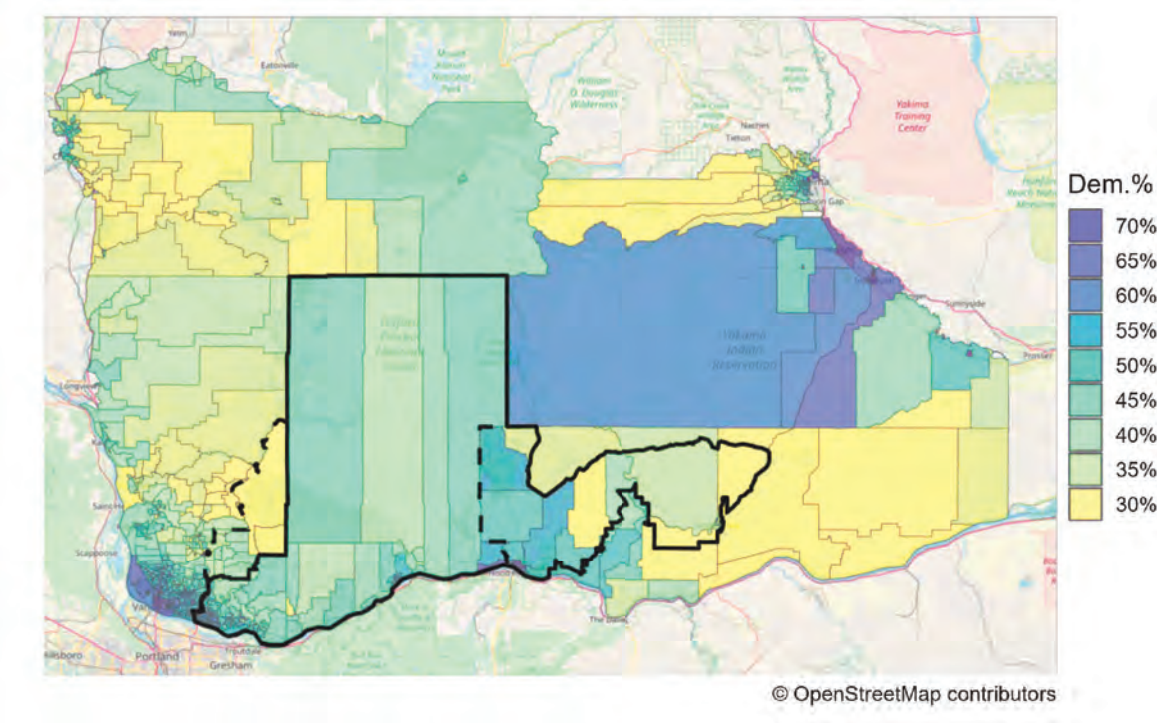
I've once again examined the districts that were changed in Remedial Map 3, under a variety of specifications.

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

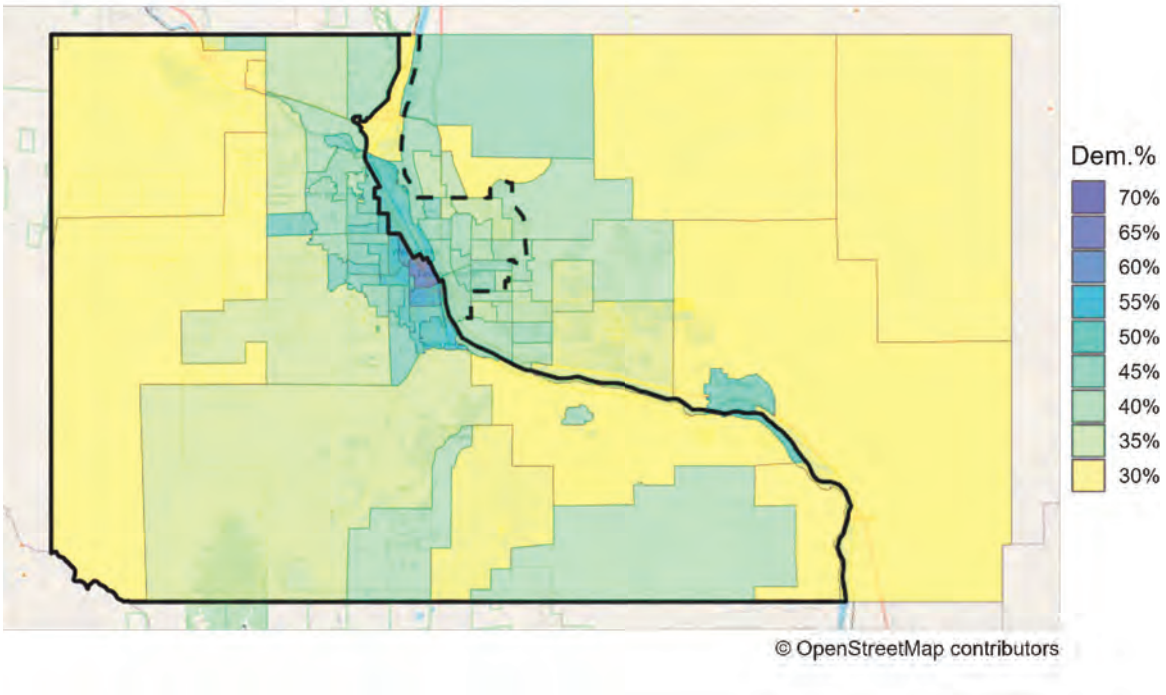
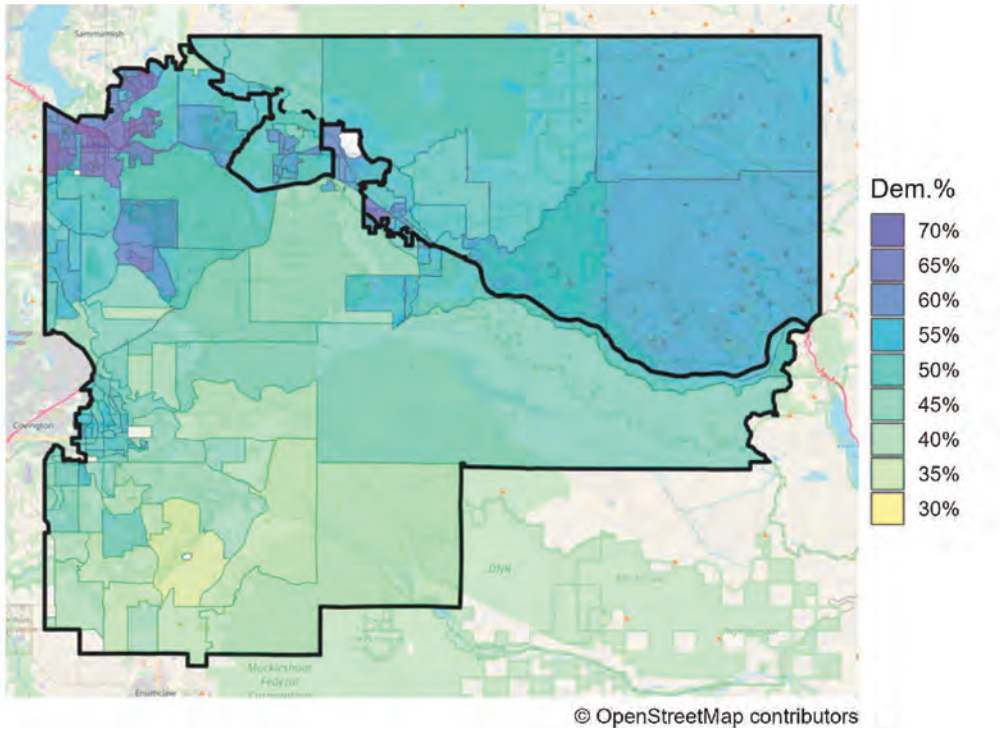


Figure 28: Democratic Percentage in VTDs, Enacted and Remedial Maps 3, District 12



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

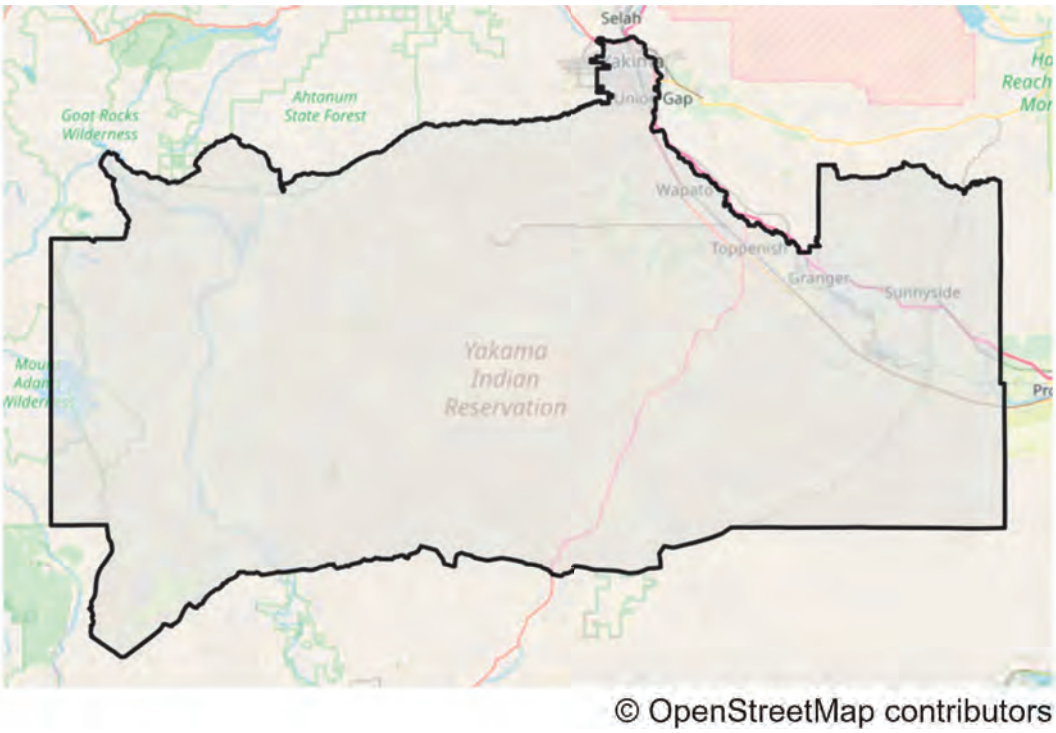


Figure 30: Enacted Map, with Districts Altered in Remedial Map 5 Highlighted

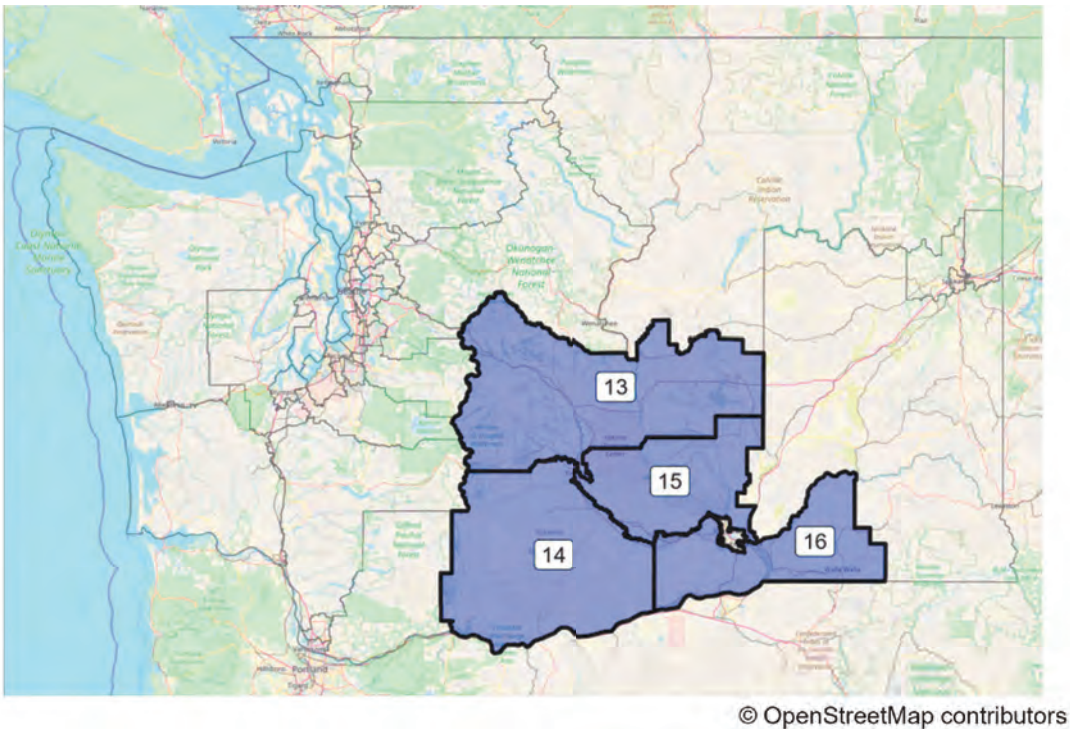


Figure 31: Remedial Map 5, with Districts Altered from Enacted Map Highlighted

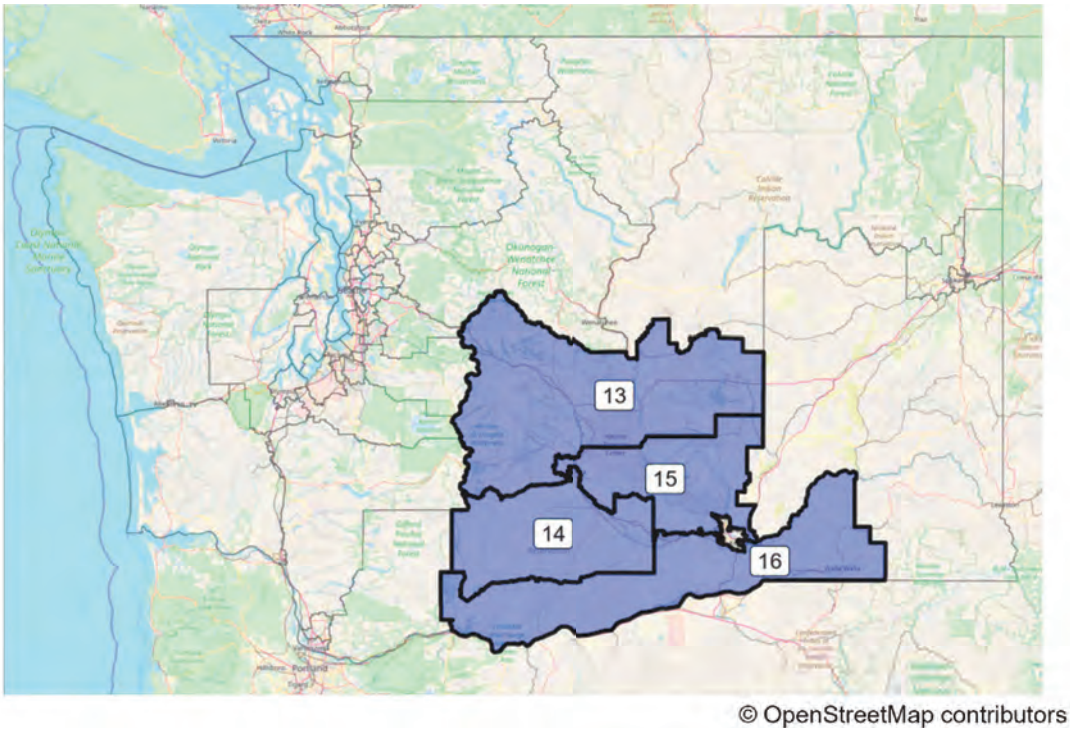
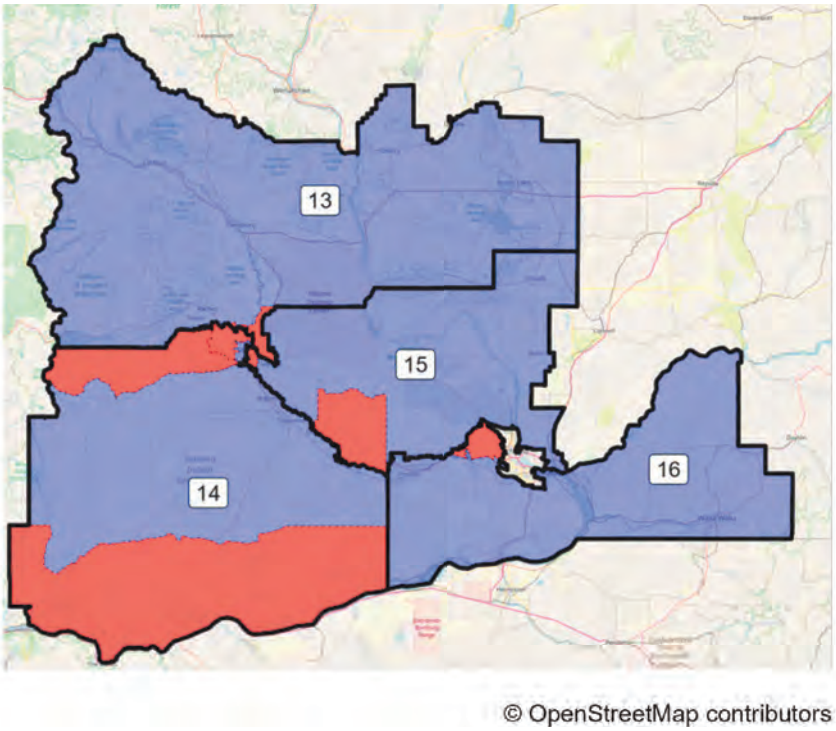


Figure 32: Enacted Map, with Census Blocks Shifted Into Different Districts in Remedial Map 5 Highlighted in Red



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.

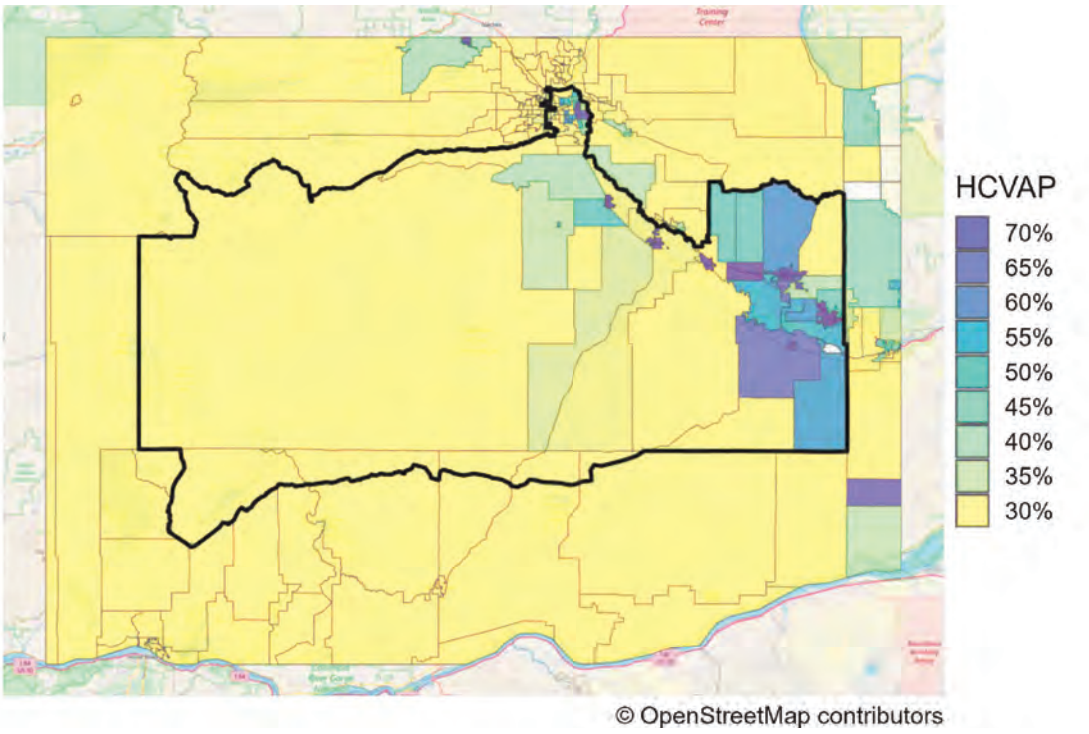
The districts that are changed do become appreciably less compact using this approach. District 16 in particular becomes the least compact district on the map, using either the Polsby-Popper or Reock score.

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
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Delaware, OH 43015
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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%

EXHIBIT 1

December 1, 2023 Declaration of Dr. Oskooii

Expert Report Submitted on Behalf of Plaintiffs

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

Kassra AR Oskooii, Ph.D.

University of Delaware

December 1, 2023

A. Background and Qualifications

1. I, Kassra AR Oskooii, am over 18 years of age and am competent to testify.

2. I am a tenured, Associate Professor and Provost Teaching Fellow in the department of Political Science and International Relations at the University of Delaware ("UD"), having joined the faculty in 2016 as an Assistant Professor. I am also an affiliated faculty member at UD's Data Science Institute, Master of Science in Data Science, Center for Political Communication, and Center for the Study of Diversity. My research and teaching focuses on American political behavior, political methodology, political psychology, political representation, voting rights, and redistricting. My research has appeared in numerous leading peer-reviewed, social science journals, including *Sociological Methods and Research*, *Political Behavior*, *Public Opinion Quarterly*, *Political Psychology*, *British Journal of Political Science*, *Electoral Studies*, *Perspectives on Politics*, *Urban Affairs Review*, *State Politics and Policy Quarterly*, and *Journal of Public Policy*.

3. I received my Ph.D. in Political Science, specializing in American politics, minority and race politics, and political methodology, from the University of Washington in Seattle, Washington in 2016. Prior to that, I received my Master's Degree in Political Science at the University of Washington and received a political methodology field certificate from the Center for Statistics & the Social Sciences in 2013. I received my Bachelor of Arts in Political Science in 2008 at the University of Washington, with minors in Human Rights and Law, Societies, and Justice.

4. Of relevance to this report, I have taught courses at the University of Delaware related to demographic data collection and analysis, evaluation of redistricting plans for compliance with the Voting Rights Act of 1965 ("VRA"), and the drawing of redistricting plans using traditional redistricting criteria. Relatedly, I have been retained as an expert in redistricting and voting rights cases, including *Dickinson Bay Area Branch NAACP v. Galveston County, Texas*, No. 3:22-cv-117-JVB (S.D. Tex. 2023) (deposed and testified), *Baltimore County Branch of the NAACP v. Baltimore County, Maryland*, No. 1:21-cv-03232-LKG (D. Md. 2022), *Common Cause Florida v. Lee*, No. 4:22-cv-00109-AW-MAF (N.D. Fla. 2022), *Common Cause Florida v. Byrd*, No. 4:22-cv-00109-AW-MAF (N.D. Fla. 2022) (deposed), *Reyes v. Chilton*, No. 4:21-cv-05075-MKD (E.D. Wash. 2021) (deposed), *Finn et al. v. Cobb County Board of Elections and Registration*, No. 1:22-cv-02300-ELR (N.D. Ga. 2022), *Caroline County Branch of the NAACP v. Town of Federalsburg*, Civ. Action No. 23-SAG-00484 (D. Md. 2023), and *Coca v. City of Dodge City, et al.*, Case No. 6:22-cv-01274 (D. Kan. 2022) (deposed).

5. As an expert consultant, I have also advised the State of Maryland on its 2021 Congressional and Legislative redistricting plans. I have also examined and redrawn the 2022 school board district boundaries of the Roswell Independent School District in the state of New Mexico. More information about my qualifications and expert witness and consulting background can be found on my Curriculum Vitae, appended to this declaration as **Exhibit A**.

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

B. Scope of Work

7. I was asked to prepare legislative redistricting plans for the Washington Legislature (i) that respect traditional redistricting criteria and the redistricting criteria set forth in Washington law, and (ii) that include a legislative district numbered 14 ("LD 14") in the Yakima Valley region uniting communities of interest in the region and remedying the Section 2 violation found by the district court. With respect to the second requirement, I was asked to draw maps that include an LD 14 that, to the extent possible, unifies the population centers from East Yakima to Pasco that form a community of interest, including cities in the Lower Yakima Valley like Wapato, Toppenish, Granger, Sunnyside, Mabton, and Grandview.

8. I prepared four remedial plans that satisfy all of the above requirements (Plaintiffs' Remedial Maps 1-4). At the request of Counsel for Plaintiffs, I prepared one additional remedial option that respects traditional redistricting criteria and the redistricting criteria set forth in Washington law, and that unites East Yakima with the Lower Yakima Valley cities listed above but does not include Pasco in LD 14 (Plaintiffs' Remedial Map 5).

9. Attached to this report, I include district shapes for all five remedial maps in GeoJSON format, as well as block assignment files and pdf images of each remedial maps. I also include the remedial maps in an interactive html format that displays important roadways, geographical markers, and voting precinct boundaries. The maps in html format can be downloaded to a computer and opened on any internet browser.

C. Approach

10. I relied on the applicable redistricting criteria to draw the five remedial maps.

11. In drawing districts, I considered the criteria found in Washington Constitution Article 2, Section 43 and in statute at RCW 44.05.090. I drew districts to have a population as nearly equal as is practicable, consistent with the constitutional one-person-one-vote requirement. I drew districts to follow boundaries of political subdivisions and communities of interest. I minimized the number of counties, municipalities, and precincts split into multiple districts. And I endeavored to draw districts with convenient, contiguous, and compact territory, ensuring that areas of each district are connected and can be readily traversed by road.

12. I also considered other traditional redistricting principles in drawing the remedial plans. To the extent practicable, I sought to minimize changes to districts outside the Yakima Valley region. I also avoided pairing incumbents to the extent practicable, based on publicly available data.

13. I did not consider race or racial demographics in drawing the remedial plans. I did not make visible, view, or otherwise consult any racial demographic data while drawing districts. I did not assess the districts for performance to elect minority candidates of choice.

14. I did not consider election results or any partisan performance metrics in drawing the remedial plans, and I did not make visible, view, or otherwise consult any such data while drawing districts.

15. As indicated in further detail below, I conclude that all five remedial maps herein abide by Washington's redistricting criteria and other traditional redistricting criteria.

D. Plaintiffs' Remedial Map 1

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

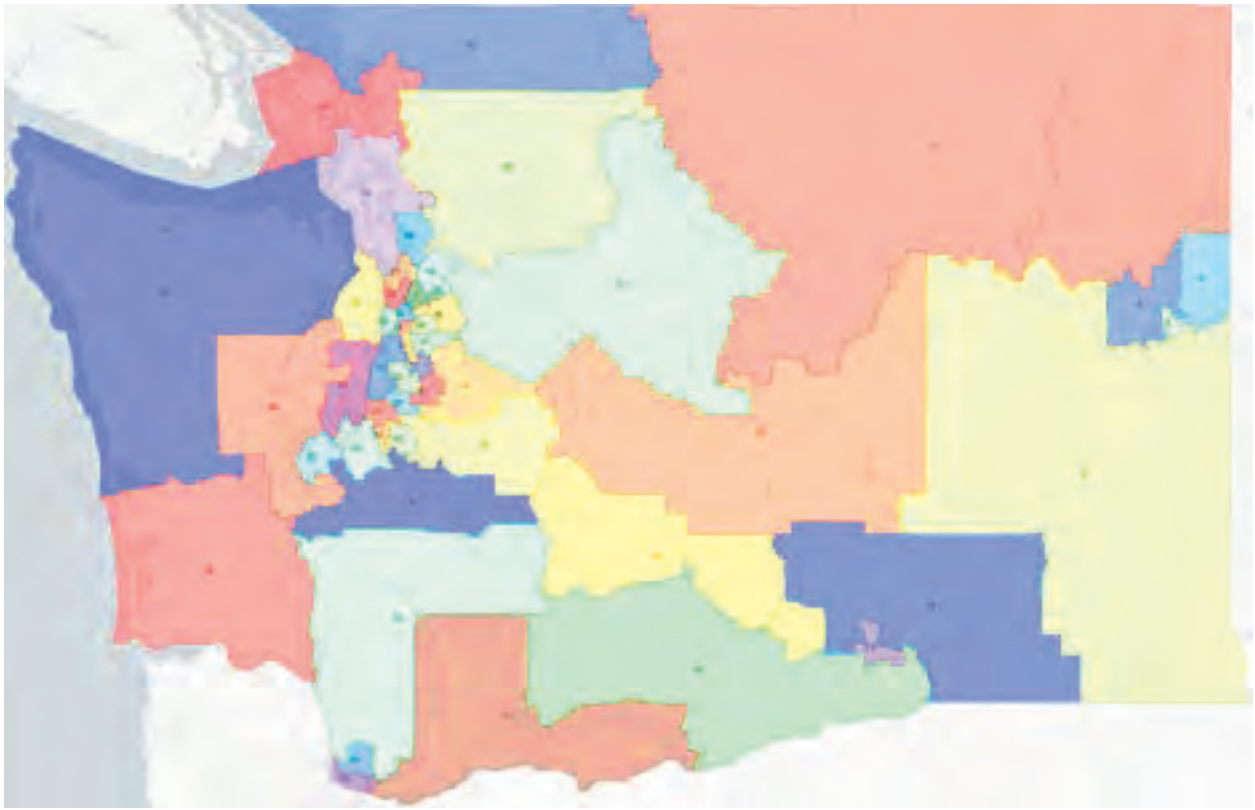

Figure 1: Remedial Map 1

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

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

18. Remedial Map 1's districts are reasonably shaped and compact, particularly given the often oddly shaped precinct and municipal boundaries and variable topography in Washington. **Appendix Table 2** provides the Reock and Polsby-Popper compactness scores for Remedial Map 1, which are largely on par with the compactness scores for the Enacted Plan.[2]

19. Remedial Map 1's districts are comprised of convenient, contiguous territory and are traversable.

20. Remedial Map 1 respects communities of interest and minimizes splitting counties, cities, and precincts. **Appendix Table 3** provides statistics regarding county splits for Remedial Map 1, including county-district splits and district-county splits.[3] Remedial Map 1 performs about the same on county split metrics as compared to the Enacted Plan. With respect to precinct and city splits, I used the updated 2022 precinct boundaries and avoided any precinct or city splits unless such splits were necessary for the purposes of maintaining population equality and/or contiguity (including road connectivity).

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

22. In summary, Remedial Map 1 is compliant with all relevant redistricting criteria.

E. Plaintiffs' Remedial Map 2

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

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

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

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

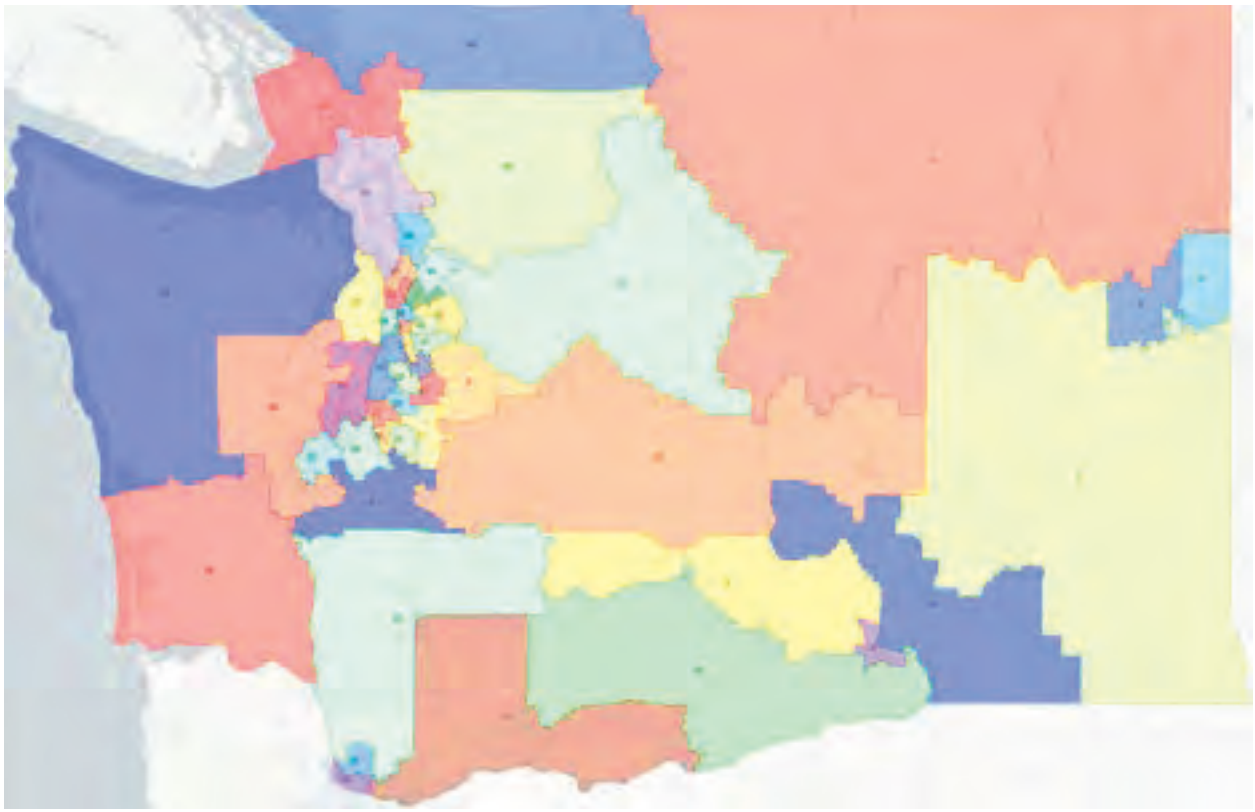

Figure 2: Remedial Map 2

24. **Appendix Table 1** provides, for each district in Remedial Map 2, the total population based on Washington's adjusted 2020 U.S. Census data and the population deviation from the target population (157,251). According to Table 1, Remedial Map 2 has a negligible total population deviation of 0.22%, which is less than the Enacted Plan and well below the 10% population deviation threshold for state legislative plans accepted by courts.

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

26. Remedial Map 2's districts are comprised of convenient, contiguous territory and are traversable.

27. Remedial Map 2 respects communities of interest and minimizes splitting counties, cities, and precincts. **Appendix Table 3** provides statistics regarding county splits for Remedial Map 2, which performs about the same on metrics of county splits as compared to the Enacted Plan. Cities and precincts were only split when necessary for the purposes of population deviation and/or contiguity (including road connectivity).

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

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

F. Plaintiffs' Remedial Map 3

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

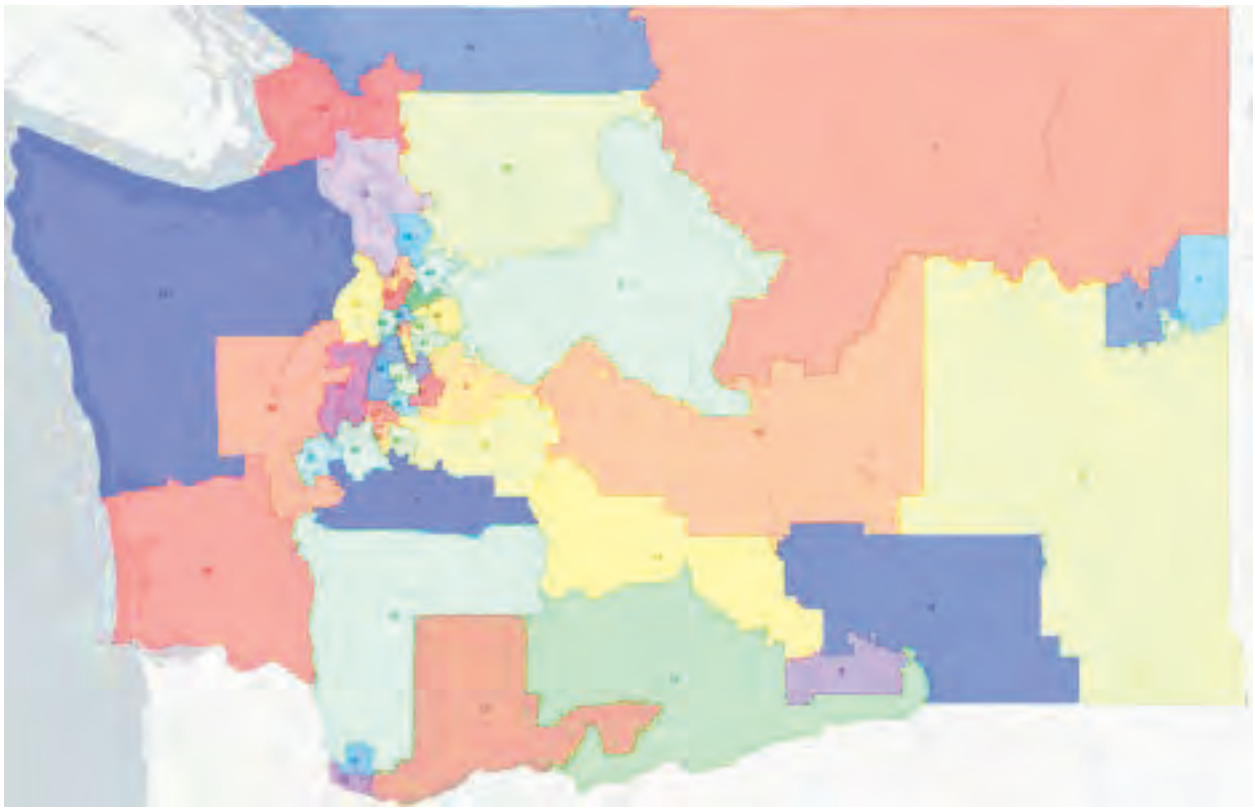

Figure 3: Remedial Map 3

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

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

33. Remedial Map 3's districts are comprised of convenient, contiguous territory and are traversable.

34. Remedial Map 3 respects communities of interest and minimizes splitting counties, cities, and precincts. **Appendix Table 3** provides statistics regarding county splits for Remedial Map 3, which performs the same or better on metrics of county splits as compared to the Enacted Plan. Cities and precincts were only split when necessary for the purposes of population deviation and/or contiguity (including road connectivity).

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

36. In summary, Remedial Map 3 is compliant with all relevant redistricting criteria.

G. Plaintiffs' Remedial Map 4

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

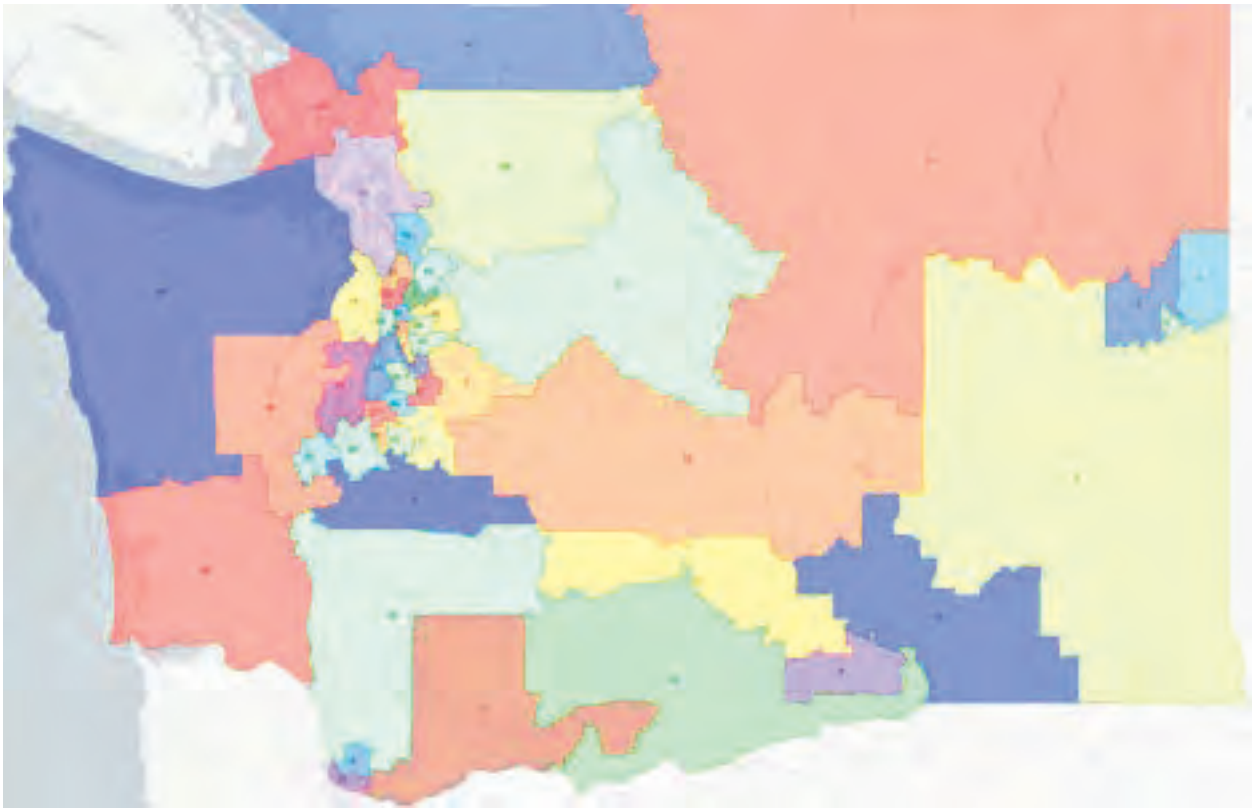

Figure 4: Remedial Map 4

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

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

39. Remedial Map 4's districts are reasonably shaped and compact, particularly given the often oddly shaped precinct and municipal boundaries and variable topography in Washington. **Appendix Table 2** below provides the Reock and Polsby-Popper compactness scores for Remedial Map 4, which are largely on par with the compactness scores for the Enacted Plan.

40. Remedial Map 4's districts are comprised of convenient, contiguous territory and are traversable.

41. Remedial Map 4 respects communities of interest and minimizes splitting counties, cities, and precincts. **Appendix Table 3** below provides statistics regarding county splits for Remedial Map 4, which performs about the same on metrics of county splits as compared to the Enacted Plan. Cities and precincts were only split when necessary for the purposes of population deviation and/or contiguity (including road connectivity).

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

43. In summary, Remedial Map 4 is compliant with all relevant redistricting criteria.

H. Plaintiffs' Remedial Map 5

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

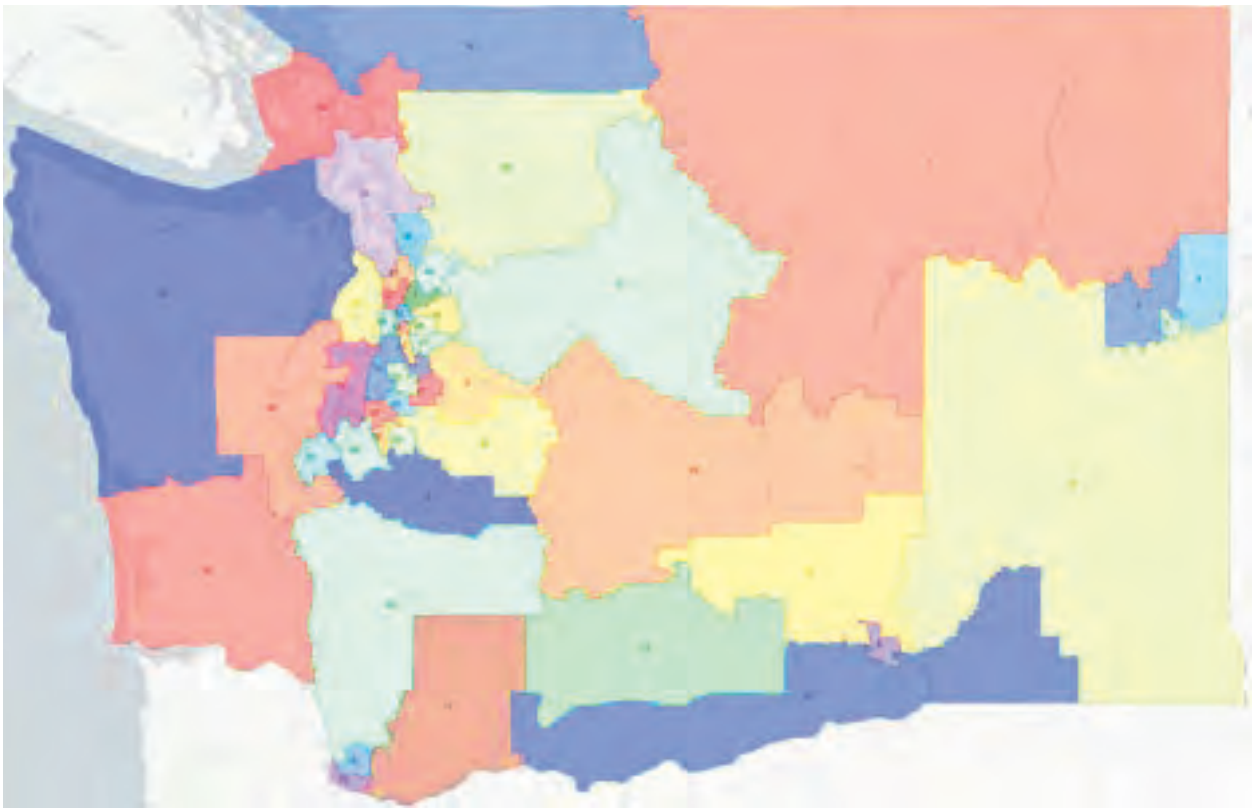

Figure 5: Remedial Map 5

45. **Appendix Table 1** in the Appendix provides, for each district in Remedial Map 5, the total population based on Washington's adjusted 2020 U.S. Census data and the population deviation from the target population (157,251). According to Table 1, Remedial Map 4 has a negligible total population deviation of 0.25%, which is the same as the Enacted Plan and well below the 10% population deviation threshold for state legislative plans accepted by courts.

46. Remedial Map 5's districts are reasonably shaped and compact, particularly given the often oddly shaped precinct and municipal boundaries and variable topography in Washington. **Appendix Table 2** provides the Reock and Polsby-Popper compactness scores for Remedial Map 5, which are largely on par with the compactness scores for the Enacted Plan.

47. Remedial Map 5's districts are comprised of convenient, contiguous territory and are traversable.

48. Remedial Map 5 respects communities of interest and minimizes splitting counties, cities, and precincts. **Appendix Table 3** provides statistics regarding county splits for Remedial Map 5, which performs about the same on metrics of county splits as compared to the Enacted Plan. Cities and precincts were only split when necessary for the purposes of population deviation and/or contiguity (including road connectivity).

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

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

I. Conclusion

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

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

Executed by:

Dr. Kassra AR Oskooii

Dated: December 1, 2023

Appendix

Table 1 – Population Deviation

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

Table 2 – Compactness Scores

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

Table 3 – County Split Metrics

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

Kassra A.R. Oskooii

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Academic Appointments

University of Delaware
Political Science & International Relations

Associate Professor	2021-Present
Assistant Professor	2016-2021
Provost Teaching Fellow	2022-Present

Current Faculty Affiliations:

Data Science Institute (DSI)	2023-Present
Master of Science in Data Science (MSDS)	2023-Present
Center for Political Communication (CPC)	2016-Present
Center for the Study of Diversity (CSD)	2016-Present

Former Faculty Affiliations:

Race, Justice, Policy Research Initiative (RJPRI)	2017-2023

Education

University of Washington Ph.D., 2016
Department of Political Science
General Fields: American Politics & Political Methodology
Specialized Field: Minority and Race Politics

University of Washington M.A., 2013
Department of Political Science
Center for Statistics & the Social Sciences (CSSS)
Political Methodology Field Certificate (2013)

University of Washington B.A., 2008
Major: Political Science
Minors: Human Rights and Law, Societies, & Justice

Peer-Reviewed Journal Publications

"In the Shadow of September 11: The Roots and Ramifications of Anti-Muslim Attitudes in the United States." ***Advances in Political Psychology***. w/ Lajevardi, N., Saleem, M., and Docherty, M. (Forthcoming)

"Social Mobility Through Immigrant Resentment: Explaining Latinx Support for Restrictive Immigration Policies and Anti-Immigrant Candidates." ***Public Opinion Quarterly***. w/ Hickel, F., and Collingwood, L. (Forthcoming)

"The Participatory Implications of Racialized Policy Feedback." 2023. ***Perspectives on Politics***, 21(3): 932-950. w/ Garcia-Rios, S., Lajevardi, N. and Walker, H.

"Undermining Sanctuary? When Local and National Partisan Cues Diverge." 2023. ***Urban Affairs Review***, 59(1): 133-169. w/ Collingwood, L. & Martinez, G.

"Fight Not Flight: The Effects of Explicit Racism on Minority Political Engagement." 2022. ***Electoral Studies***, 80: 102515. w/ Besco, R., Garcia-Rios, S., Lagodny, J., Lajevardi, N., Tolley, E.

"Hate, Amplified? Social Media News Consumption and Anti-Muslim Policy Support." 2022. ***Journal of Public Policy***, 42: 656-683. w/ Lajevardi, N. and Walker, H. (FirstView)

"Estimating Candidate Support in Voting Rights Act Cases: Comparing Iterative EI and EI-RxC Methods." 2022. ***Sociological Methods and Research***, 51(1): 271-304. w/ Barreto, M., Collingwood & Garcia-Rios, S.

"Beyond Generalized Ethnocentrism: Islam-Specific Beliefs and Prejudice toward Muslim Americans." 2021. ***Politics, Groups, and Identities***, 9(3): 538-565. w/ Dana, K. & Barreto, M.

"Opinion Shift and Stability: The Information Environment and Long-Lasting Opposition to Trump's Muslim Ban." 2021. ***Political Behavior***, 43: 301–337. w/Lajevardi, N. & Collingwood, L.

Covered in: *The Washington Post (Monkey Cage)*

"The Role of Identity Prioritization: Why Some Latinx Support Restrictionist Immigration Policies and Candidates." 2020. ***Public Opinion Quarterly***, 84: 860–891. w/ Hickel, F., Alamillo, R. & Collingwood, L.

"Perceived Discrimination and Political Behavior." 2020. ***British Journal of Political Science***, 50(3): 867-892.

"The Paradox Between Integration and Perceived Discrimination Among American Muslims." 2020. ***Political Psychology***, 41(3): 587-606. w/ Lajevardi, N., Walker, H. & Westfall, A.

Winner of the 2019 American Political Science Association Race, Ethnicity, and Politics Section Best Paper Award.

"Veiled Politics: Experiences with Discrimination among Muslim Americans." 2019. ***Politics and Religion***, 12(2): 629-677. w/ Dana, K., Lajevardi, N., & Walker, H.

"Partisan Attitudes toward Sanctuary Cities: The Asymmetrical Effects of Political Knowledge." 2018. ***Politics and Policy***, 46 (6): 951-984. w/ Dreier, S. & Collingwood, L.

"A Change of Heart? Why Individual-Level Public Opinion Shifted against Trump's Muslim Ban." 2018. ***Political Behavior***, 40: 1035-1072. w/ Collingwood, L. & Lajevardi, N.

Covered in: *The Washington Post (Monkey Cage), Vox, ThinkProgress, NPR, Al Jazeera, Middle East Eye, Psychology Today, & Social Psych Online*

"Old-Fashioned Racism, Contemporary Islamophobia, and the Political Isolation of Muslim Americans in the Age of Trump." 2018. ***Journal of Race, Ethnicity, and Politics***, 3(1): 112-152. w/ Lajevardi, N.

"The Politics of Choice Reconsidered: Partisanship, Ideology, and Minority Politics in Washington's Charter School Initiative." 2018. ***State Politics and Policy Quarterly***, 18(1): 61-92. w/ Collingwood, L. & Jochim, A.

"Muslims in Great Britain: The Impact of Mosque Attendance on Political Behaviour and Civic Engagement." 2018. ***Journal of Ethnic and Migration Studies***, 44(9): 1479-1505. w/ Dana, K.

"eiCompare: Comparing Ecological Inference Estimates across EI and EI: RxC." 2016. ***R Journal***, 8(2): 92-101. w/ Collingwood, L., Barreto, M. & Garcia-Rios, S.

"How Discrimination Impacts Sociopolitical Behavior: A Multidimensional Perspective." 2016. ***Political Psychology***, 37(5): 613-640.

"Mosques as American Institutions: Mosque Attendance, Religiosity and Integration into the Political System among American Muslims." 2011. ***Religions***, 2(4): 504-524. w/ Dana, K. & Barreto, M.

Book Chapters Encyclopedic Entries

"Discrimination." In ***Edward Elgar Encyclopedia of Political Sociology*** edited by Maria Grasso and Marco Giugni. (Forthcoming)

"Race and Racism in U.S. Campaigns." 2020. In ***Oxford Handbook on Electoral Persuasion*** edited by Liz Suhay, Bernie Grofman, and Alex Trechsel, 15:278–295. w/ Christopher Parker, Christopher Towler, and Loren Collingwood.

Book Reviews

"Understanding Muslim Political Life in America: Contested Citizenship in the Twenty-First Century." Edited by Brian R. Calfano and Nazita Lajevardi. Philadelphia: Temple University Press, 2019. 248p. ***Perspectives on Politics***.

Public Writing

"Biden reverses Trump's 'Muslim Ban.' Americans support the decision." ***The Washington Post*** *(Monkey Cage)* (27 January, 2021). w/ Lajevardi, N. and Collingwood, L.

"Targeted: Veiled Women Experience Significantly More Discrimination in the U.S." ***Religion in Public*** (21 January, 2020). w/ Dana, K., Lajevardi, N., and Walker, H.

"Here's what the Democrats need to do to get the DREAM Act through Congress." ***LSE American Politics and Policy Blog*** (29 January, 2018). Also covered by Newsweek U.S. Edition. w/ Walker, H. and Garcia-Rios, S.

"Why Individual-Level Opinion Rapidly Shifted Against Trump's 'Muslim Ban' Executive Order." ***Religion in Public*** (17 January, 2018). w/ Collingwood, L. and Lajevardi, N.

"Allies in name only? Latino-only leadership on DACA may trigger implicit racial biases among White liberals." ***LSE American Politics and Policy Blog*** (28 September, 2017). w/ Garcia-Rios, S. and Walker, H.

"Protests against Trump's immigration executive order may have helped shift public opinion against it" ***LSE American Politics and Policy Blog*** (12 February, 2017). w/ Collingwood, L. and Lajevardi, N.

Select Works In Progress

"The Influence of American Identity on Anti-Muslim Policy Preferences Across Partisans." w/ Lajevardi, N. (Invited for R&R)

"Neighboring Identities: Psychological and Political Reactions to Xenophobic Campaign Attacks." w/ Basco, R., Fisher, S., Garcia-Rios, S., Lagodny, J., Lajevardi, N., and Tolley, E. (In Progress)

"Partisan Winners and Losers: Testing Alternative Frames of Congressional Election Results Among White and Latino Voters." w/ Valenzuela, A. and Collingwood, L. (In Progress)

"Polarizing Cues Revisited: The Role of Partisan Benchmarking." w/ Kipp, S., Medenica, V., and Walker, H. (In Progress)

"Voting for Violence? Tracing Ethno-Racial and Partisan Differences in Support for Anti-Democratic Violence Before and After the 2020 Presidential Election." w/ Valenzuela, A. and Collingwood, L. (In Progress)

"White Candidates and Latino Voters: The Significance of Symbolic vs Substantive Ethnic Cues." w/ Collingwood, L. and Alamillo, R. (In Progress)

Grants, Fellowships, & Awards

Nominee of UD's Excellence in Teaching Award	(2023)
UD Provost Teaching Fellow	(2022-)
APSA Race, Ethnicity, and Politics Best Paper Award w/ Nazita Lajevardi, Hannah Walker and Aubrey Westfall	(2019)
AAPOR Student-Faculty Diversity Pipeline Award	(2019)

CTAL Instructional Improvement Grant: Engaging Diversity in Political Science w/ Kara Ellerby ($11,000)	(2018)
POSCIR Seed Research Grant ($1,500)	(2018)
DEL General University Research Grant ($7,500)	(2017)
UW Political Science Research Fellowship (est. $13,000)	(2016)
Dissertation Improvement Research Grant, UCLA ($3000)	(2015)
Dean Recognition for Exceptional Pedagogical Contribution, UW	(2014)
Best Graduate Paper in PoliSci (w/Hannah Walker), UW	(2014)
UW Center for Democracy & VRA Research Fellowship ($5,000)	(2014)
UW Center for Democracy & VRA Research Fellowship ($5,000)	(2013)
Center for Statistics and the Social Sciences Grant ($1,000)	(2013)
UW WISER Research Grant ($2500)	(2011-14)
UW WISER Survey Research Fellowship ($20,000)	(2011-14)
Grad. Opportunities & Minority Achievement Fellowship ($4,000)	(2010-11)
Donald R. Matthews Graduate Fellowship ($40,000)	(2010-11)
Jody Deering Nyguist Award for Excellence in Public Speaking	(2008)

Research Center Affiliations

Race, Justice, Policy Research Initiative, UD	(2017 -)
Center for Political Communication, UD	(2016 -)
Center for the Study of Diversity, UD	(2016 -)
UW Center for Democracy and Voting Rights Research	(2013-14)
Washington Institute for the Study of Race & Ethnicity (WISER)	(2010-16)
Center for Social Science and Statistics (CSSS)	(2010-16)
Washington Survey Research Center (WASRC)	(2010-15)

Teaching Experience

University of Delaware (2016 -)
- POSC 150: Intro to American Politics (x10)
- POSC 230: Intro to Politics and Social Justice (x2)
- POSC 413: Minority Politics, Representation, and Voting Rights (x4)
- POSC 867: Race, Ethnicity, and Politics (Graduate Seminar) (x3)
- POSC 807: American Political Behavior (Graduate Seminar) (x1)

University of Washington (2011-2016)
- POLS 202: Intro to American Politics (x2)
- POLS 357: Minority Representation and the Voting Rights Act (x1)
- POLS 205: Political Science as a Social Science (TA)
- POLS 317: US Race and Ethnic Politics (TA)
- POLS 353: US Congress (TA)
- POLS 503: Advanced Research Design and Analysis (TA)
- LAW E 558: Voting Rights Research and the Law (TA)

External Invited Talks/Panels

"Diversity and the State of Democratic Citizenship." Featured invited roundtable sponsored by the ***Center for the Study of Democratic Citizenship***. April 23,

2021.

"Shocks to the System: Capturing Opinion Shift and Stability Toward Trump's Muslim Ban." Keynote Speaker at the Democracy and Diversity Triannual Conference at the ***Center for the Study of Democratic Citizenship*** in Montreal, Canada. April 24-25, 2020. [Cancelled Due to COVID-19]

"The New American Electorate." Panelist. ***Princeton University***. Event sponsored by the Center for the Study of Democratic Politics. April 3, 2020. [Cancelled Due to COVID-19]

"Neighboring Identities: Psychological and Political Reactions to Generalized and Particularized Anti-Immigrant Appeals." w/Sergio Garcia-Rios. ***University of Toronto***. Talk Sponsored by the Department of Political Science. March 6, 2020.

"History, Institutions, and Theory Research Coordination Network on Racial and Ethnic Politics." Panelist. ***University of Pennsylvania***. Event sponsored by the American Political Science Association's Special Projects Fund and the Center for the Study of Ethnicity, Race and Immigration at Penn. February 28-29, 2020.

"Using Observational and Experimental Data to Examine the Sociopolitical Consequences of Perceived Discrimination." ***Rutgers University***. Talk sponsored by the Emerging Trends Lecture Series & the Center for the Experimental Study of Politics and Psychology. April 27, 2018.

"A Change of Heart? Using Panel Designs to Establish Causality with Real Events." w/Loren Collingwood. ***Princeton University***. Talk sponsored by the Center for the Study of Democratic Politics. April 26, 2018.

"Using Observational and Experimental Data to Examine the Sociopolitical Consequences of Perceived Discrimination." ***University of California Los Angeles***. Talk sponsored by the Race, Ethnicity and Politics Workshop. March 5, 2018.

"Muslim-American Attitudes, Sociopolitical Behavior, and Identity." Panelist/Section Presenter. ***University of California Los Angeles***. Event sponsored by the Luskin School of Public Affairs & the National Science Foundation. December 15, 2017.

"Muslim-American Political Behavior." Panelist/Section Presenter. ***Menlo College***. Event sponsored by Menlo College & the National Science Foundation. December 16, 2016.

"How Democratic is the U.S. Constitution, and to What Extent did the Founding Fathers Oppose Majority Rule?" Speaker. University Day Public Lecture. March 18, 2023.

"Race, Ethnicity, and Gender in the 2020 Election." Speaker. Panel sponsored by the the University of Delaware POSCIR. December 14, 2020.

"Building Community: Scholarship and Connection among Faculty of Color." Speaker. Panel sponsored by the Center for the Study of Diversity (CSD) at the University of Delaware. February 24, 2020.

"Executive Power and the U.S. Democracy." Talk sponsored by the 2019 YALI Mandela Washington Fellows Program at the University of Delaware. July 2, 2019.

"Opinion Shift and Stability: Long-Lasting Opposition toward Trump's Muslim Ban." Talk sponsored by the Department of Sociology and Criminal Justice Colloquium Speaker Series at the University of Delaware. April 24, 2019.

"Old-Fashioned Racism and the Roots of Contemporary Islamophobia." Talk sponsored by the Center for the Study of Diversity (CSD) Colloquium Speaker Series at the University of Delaware. December 6, 2018.

"Understanding Executive Power in the United States." Talk sponsored by the 2018 YALI Mandela Washington Fellows Program at the University of Delaware. July 2, 2018.

"The Inclusion and Exclusion of Minority Groups in the United States." Talk sponsored by the 2017 YALI Mandela Washington Fellows Program at the University of Delaware. July 11, 2017.

"Inclusion and Exclusion: Perceptions of Discrimination in the Workplace." Diversity Summit Presenter. Talk sponsored by the Office of Equity and Inclusion at the University of Delaware. June 20, 2017.

"What Happens Now Part II? A Forum to Discuss Bigotry & Closed Borders in the Trump Era." Speaker. Panel sponsored by the Department of Women and Gender Studies, Sociology and Criminal Justice, Political Science and International Relations, & the College of Arts and Sciences at the University of Delaware. February 13, 2017.

"Forum on the Travel Ban Executive Order." Speaker. Panel sponsored by the University of Delaware Provost Office. February 7, 2017.

"What Happens Now Part I? Fear, Diversity, and Inclusion in Post-U.S. Election." Speaker. Panel sponsored by Women and Gender Studies, Sociology and Criminal Justice, Political Science and International Relations, History, & the College of Arts and Sciences at the University of Delaware. November

30, 2016.

"Race, Religion, and Gender." Election Central Panelist. Event sponsored by the Center for Political Communication at the University of Delaware. November 8, 2016.

Select Conference Presentations

2021

"Partisan Winners and Losers: Testing Alternative Frames of Congressional Election Results Among White and Latino Voters." Online Paper Presentation at the Annual American Political Science Association Conference (APSA).

"Kissing Up and Kicking Down: How Immigrant Resentment Impacts Latinx Support for Donald Trump and Restrictive Immigration Policies." Online Paper Presentation at the Annual American Political Science Association Conference (APSA).

"How do Political Attacks Affect Racial and Ethnic Self-Identities?" Online Paper Presentation at the Annual Midwest Political Science Association Conference (MPSA).

"Kissing Up and Kicking Down: How Immigrant Resentment Impacts Latinx Support for Donald Trump and Restrictive Immigration Policies." Online Paper Presentation at the Annual Midwest Political Science Association Conference (MPSA).

2019

"The Significance of Politicized Group Identities: Re-examining the Relationship between Contact with Punitive Political Institutions and Political Participation." Paper Presentation at the Annual American Political Science Association Conference (APSA) in Washington DC.

"Threat or Reassurance? Framing Midterm results among Latinos and Whites." Paper Presentation at the Annual American Political Science Association Conference (APSA) in Washington DC.

"When American Identity Trumps Latinx Identity: Explaining Support for Restrictive Immigration Policies." Paper Presentation at the Annual American Political Science Association Conference (APSA) in Washington DC.

"Anti-Minority Politics and Political Participation: Evidence from Four Countries." Paper Presentation at the Annual American Political Science Association Conference (APSA) in Washington DC.

2018

"Assessing the Link between Interactions with Punitive Political Institutions and Political Behavior." Paper Presentation at the 2018 Symposium on the Politics of Immigration, Race, and Ethnicity (SPIRE) Meeting in Philadelphia, PA (University of Pennsylvania).

"Are Integrated Muslim Americans More Likely to Perceive Discrimination?" Paper Presentation at the Annual American Political Science Association Conference (APSA) in Boston, MA.

"Opinion Shift and Stability: Enduring Individual-Level Opposition to Trump's Muslim Ban." Paper Presentation at the Annual American Political Science Association Conference (APSA) in Boston, MA.

"Assessing the Link between Interactions with Punitive Political Institutions and Political Behavior." Paper Presentation at the 2018 Collaborative Multiracial Post-Election Study (CMPS) Meeting in Los Angeles, CA (UCLA).

2017

"A Change of Heart? Why Individual-Level Public Opinion Shifted against Trump's Muslim Ban." Paper Presentation at the Annual American Political Science Association Conference (APSA) in San Francisco, CA.

"Veiled Politics: Experiences with Discrimination among American Muslims." Paper Presentation at the Annual American Political Science Association Conference (APSA) in San Francisco, CA.

"The Racial Shield as Racism Exoneration: Explaining White Racist Support for Conservative Minority Candidates." Paper Presentation at the Annual Western Political Science Association Conference (WPSA) in Vancouver BC, Canada.

2016

"Assessing the Mechanism Linking Discrimination to Democratic Engagement." Paper Presentation at the Annual American Political Science Association Conference (APSA) in Philadelphia, PA.

"Estimating Candidate Support: Comparing EI and EI-RxC." Paper Presentation at the Annual Midwest Political Science Association Conference (MPSA) in Chicago, Illinois.

Student Supervision

Sadie Ellington, Dissertation Committee Member (POSC)
Enes Aksu, Dissertation Committee Member (POSC)

Enes Tuzgen, Dissertation Committee Member (POSC)
Olga Gerasimenko, Dissertation Committee Member (POSC)
Furkan Karakayan, Dissertation Committee Member (POSC)
Richard Takyi Amoah, Dissertation Committee Member (ECON)
Sheila Afrakomah, Dissertation Committee Member (ECON)
Ahmet Ates, Dissertation Committee Member (POSC)
Charles Mays, Long Paper and Dissertation Chair (POSC)
Ian Mumma, Long Paper Committee Member (POSC)
Clark Shanahan, Long Paper Committee Member (POSC)

Rachel Spruill, Undergraduate Honors Thesis Chair
Jessica Sack, Undergraduate Honors Thesis Chair
Jordan Spencer, Undergraduate Faculty Mentor for the McNair Program
Lauren Turenchalk, Undergraduate Research Supervisor

Professional Service

Editorial Board Member

Politics and Religion (6/2018 - 12/2021)

Discipline Service

American Political Science Association (APSA) REP Section Chair (2021-2022)

Western Political Science Association (WPSA) Task Force on Equity, Inclusion, and Access in the Discipline (2020-2021)

APSA Race, Ethnicity, and Politics Best Paper Award Committee Member (2020)

University Service

2019 Summer Educational and Cultural Experience Program (SECEP) Lecturer of Politics and Justice in the United States. (July 27 - August 20, 2019)

Manuscript Reviewer/Referee

American Journal of Political Science, American Political Science Review, American Politics Research, British Journal of Political Science, Belgian Federal office for Science Policy, Behavioral Sciences of Terrorism and Political Aggression, Cambridge University Press, Electoral Studies, European Political Science Review, International Journal of Public Opinion, Journal of Elections, Public Opinion & Parties, Journal of Ethnic and Migration Studies, Journal of Politics, Journal of Race, Ethnicity and Politics, Migration Studies, Perspectives on Politics, Political Behavior, Politics, Groups, and Identities, Political Psychology, Political Research Quarterly, Politics and Religion, Public Opinion Quarterly, Social Science Quarterly, Time-Sharing Experiments for the Social Sciences

Conference Coordination

Politics of Race, Immigration, and Ethnicity Consortium (PRIEC) at the University of Delaware. (2020)

Politics of Race, Immigration, and Ethnicity Consortium (PRIEC) at the University of Washington. (2013)

Latinos and the Voting Rights Act. Center for Democracy and Voting Rights Research at the University of Washington Law School. (2013)

Islam in the Public Sphere Conference. Washington Institute for the Study of Race & Ethnicity (WISER). (2011)

Expert Consulting Experience

State of Maryland Attorney General's Office; 2021 MD Redistricting

Baltimore County Branch of the NAACP v. Baltimore County, Maryland, No. 1:21-cv-03232-LKG (D. Md. 2022)

Common Cause Florida v. Lee, 4:22-cv-109-AW-MAF (N.D. Fla.)

Common Cause Florida v. Byrd, No. 4:22-cv-00109-AW-MAF (N.D. Fla. 2022) [Deposed]

Dickinson Bay Area NAACP Branch v. Galveston County, Texas, No. 3:22-cv-117-JVB (S.D. Tex. 2023) [Deposed & Testified]

Reyes v. Chilton, 4:21-cv-05075-MKD (E.D. Wash. 2021) [Deposed]

Roswell Independent School District (RISD); 2022 Redistricting

Caroline County Branch of the NAACP v. Town of Federalsburg, Civ. Action No. 23-SAG-00484 (D.Md. 2023)

Cobb County Board of Elections and Registration, No. 1:22-cv-02300-ELR (N.D. Ga. 2022)

Coca v. City of Dodge City, et al. Case no. 6:22-cv-01274 (D Kan. 2022) [Deposed]

Previous Research Positions

Senior Researcher, Washington Poll 2010-2014
Public Opinion Survey Design, Programming, and Analysis.

Researcher, Center for Democracy & Voting Rights Research 2013-2014
Racially Polarized Voting (RPV) Analysis of jurisdictions in states such as: California, Florida, Texas, and Washington.

Investigator, Washington State Charter School Initiative 2013
Precinct and school district level data collection and analysis of the I-1240 Vote for S360 Polling Firm and Melinda & Gates Foundation.

Skills & Additional Information

Software: R, STATA, LaTeX, ESRI, DRA
Languages: Farsi (Persian)–Native Speaker
R Packages: eiCompare (contributor), eiExpand (contributor)

EXHIBIT 2

December 1, 2023 Declaration of Dr. Collingwood

Expert Report of Dr. Loren Collingwood

Loren Collingwood

2023-12-01

Executive Summary

I have been retained by plaintiffs as an expert, and have been asked to analyze whether five plaintiff proposed remedial maps will perform electorally for Latino voters in Legislative District 14 in the Yakima Valley region– the area comprising Central Washington's large Latino community.

To assess electoral performance, as in my prior reports, I examine whether the minority-preferred candidate wins in contests featuring racially polarized voting in nine statewide elections subset to LD-14 in each of plaintiffs' five remedial plans.[1]

An electoral performance analysis reconstructs previous election results based on new district boundaries to assess whether a minority or white preferred candidate is most likely to win in a given jurisdiction under consideration (i.e., a newly adopted legislative district).

Based on my analysis, I conclude that all five of plaintiffs' proposed maps provide Latino voters in the Yakima Valley region with an equal opportunity to elect candidates of choice to the state legislature in LD-14.

My opinions are based on the following data sources: Washington State general election precinct/vtd returns from 2016-2020; 2020 US Census block data, 2021 5-Year American Community Survey (ACS) data, and remedial map geojson files provided by plaintiffs' 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 Center for Social Innovation at the University of California, Riverside. I have published two

[1] My prior reports submitted to the court as Trial Exhibits 1-2 and my testimony at trial demonstrate which candidates are majority (white) and minority (Latino) preferred.

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.

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. 2020), 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 (W.D. Tex. 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.*, (N.D. Ill. 2021), having filed two reports in that case. I am 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 (Wis. 2022), 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* (Kan. 2022). 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 (D.N.D. 2023), where I filed a report and testified at trial. I was the RPV expert in *Lower Brule Sioux Tribe v. Lyman County* (D.S.D. 2022), where I filed a report. In this case, I was the RPV expert for plaintiffs, 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 (Cal. Super. Ct. 2022), 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 (E.D. Tex. 2022), 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 (D.N.D. 2023), where I filed two reports, was deposed, and testified at trial.

My curriculum vitae was submitted to the Court as Trial Exhibit 531.

Proposed Maps

Plaintiffs' counsel provided me with the geojson files for five remedial maps. Each map's 2021 ACS Citizen Voting Age Population (CVAP) demographic estimates are presented in Table 1 below.

Table 1. Demographics 2021 CVAP.

Demographic	Map.1	Map.2	Map.3	Map.4	Map.5
Percent Hispanic CVAP 2021	51.65	51.65	50.14	50.14	47
Percent White CVAP 2021	37.14	37.14	38.86	38.86	42.34
Percent Black CVAP 2021	1.37	1.37	1.34	1.34	1.51
Percent Native CVAP 2021	7.08	7.08	7.04	7.04	6.91
Percent AAPI CVAP 2021	1.95	1.95	1.96	1.96	1.75

In terms of electoral performance, I previously analyzed the performance of LD-15 in the Enacted Plan. An electoral performance analysis tests whether different plans would provide a more equal ability for minority voters to participate in the electoral process and to elect candidates of choice. For the performance analysis, I gathered precinct results for the following nine statewide elections: 2016 U.S. Senate, 2016 President, 2016 Governor, 2018 U.S. Senate, 2020 Treasurer, 2020 State Supreme Court Position 3, 2020 President, 2020 Governor, 2020 Attorney General. To examine how a candidate performs in plaintiffs' remedial versions of LD-14, I then subset the precincts to only those falling within the new LD-14 boundary. I did not use district-based elections for the performance analysis because by nature they do not allow for a full reconstruction of previous elections in the new proposed district boundaries. For this reason, in addition to the low turnout and other unusual circumstances outlined in my prior reports, the LD-15 2022 election is not a probative gauge of performance in remedial districts, and I did not utilize it to analyze the performance of remedial districts in this report.

Assessing electoral performance in the proposed maps, LD-14 performs well – and similarly – for Latino voters in all five of plaintiffs' remedial maps. It should be noted that maps 1 and 2, then 3 and 4 are the same LD-14 so produce identical numbers. The average margin of victory in Maps 1 and 2 in my analysis is 14.3% for the Latino-preferred candidate. The average margin of victory in Maps 3 and 4 in my analysis is 14.1% for the Latino-preferred candidate. Finally, the average margin of victory in Map 5 is 13.6%. Thus, all maps produce similar electoral outcomes. Notably, Latino-preferred state legislative candidates will frequently receive a lower percentage than statewide candidates, and that is especially the case where the candidate is also Latino. As a result, these performance results are sufficient to provide Latino voters with an equal opportunity to elect candidates to the state legislature. The results of my analysis are reported below in Figure 1 and Table 2 in the Appendix.

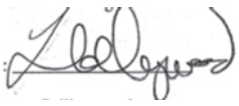
Figure 1. Electoral Performance analysis, Legislative District 14, 2016-2020 statewide general elections, paneled by map alternative.

Conclusion

Overall, each of the five proposed maps perform well for Latino voters' preferred candidates in LD-14. Therefore, Latino voters have a strong possibility of being able to elect their preferred candidate if any of plaintiffs remedial maps 1-5 is selected.

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

Dr. Loren Collingwood



Dated: December 1, 2023

Appendix

Table 2. Electoral Performance Analysis, LD-14 in Maps 1-5, 2016-2020 contests.

Candidate	Preferred_Candidate	Map	Year	Contest	Vote
Trump	White	Map 1	2020	President	0.407
Biden	Latino	Map 1	2020	President	0.569
Culp	White	Map 1	2020	Governor	0.444
Inslee	Latino	Map 1	2020	Governor	0.554
Larkin	White	Map 1	2020	Attorney General	0.423
Ferguson	Latino	Map 1	2020	Attorney General	0.576
Davidson	White	Map 1	2020	Treasurer	0.449
Pellicciotti	Latino	Map 1	2020	Treasurer	0.551
Larson	White	Map 1	2020	State Sup. Ct. 3	0.424
Montoya	Latino	Map 1	2020	State Sup. Ct. 3	0.574
Trump	White	Map 2	2020	President	0.407
Biden	Latino	Map 2	2020	President	0.569
Culp	White	Map 2	2020	Governor	0.444
Inslee	Latino	Map 2	2020	Governor	0.554
Larkin	White	Map 2	2020	Attorney General	0.423
Ferguson	Latino	Map 2	2020	Attorney General	0.576
Davidson	White	Map 2	2020	Treasurer	0.449
Pellicciotti	Latino	Map 2	2020	Treasurer	0.551
Larson	White	Map 2	2020	State Sup. Ct. 3	0.424
Montoya	Latino	Map 2	2020	State Sup. Ct. 3	0.574
Trump	White	Map 3	2020	President	0.410
Biden	Latino	Map 3	2020	President	0.566
Culp	White	Map 3	2020	Governor	0.448
Inslee	Latino	Map 3	2020	Governor	0.550
Larkin	White	Map 3	2020	Attorney General	0.426
Ferguson	Latino	Map 3	2020	Attorney General	0.573
Davidson	White	Map 3	2020	Treasurer	0.452
Pellicciotti	Latino	Map 3	2020	Treasurer	0.547
Larson	White	Map 3	2020	State Sup. Ct. 3	0.409
Montoya	Latino	Map 3	2020	State Sup. Ct. 3	0.588
Trump	White	Map 4	2020	President	0.410
Biden	Latino	Map 4	2020	President	0.566

Candidate	Preferred_Candidate	Map	Year	Contest	Vote
Culp	White	Map 4	2020	Governor	0.448
Inslee	Latino	Map 4	2020	Governor	0.550
Larkin	White	Map 4	2020	Attorney General	0.426
Ferguson	Latino	Map 4	2020	Attorney General	0.573
Davidson	White	Map 4	2020	Treasurer	0.452
Pellicciotti	Latino	Map 4	2020	Treasurer	0.547
Larson	White	Map 4	2020	State Sup. Ct. 3	0.409
Montoya	Latino	Map 4	2020	State Sup. Ct. 3	0.588
Trump	White	Map 5	2020	President	0.403
Biden	Latino	Map 5	2020	President	0.571
Culp	White	Map 5	2020	Governor	0.443
Inslee	Latino	Map 5	2020	Governor	0.554
Larkin	White	Map 5	2020	Attorney General	0.425
Ferguson	Latino	Map 5	2020	Attorney General	0.575
Davidson	White	Map 5	2020	Treasurer	0.454
Pellicciotti	Latino	Map 5	2020	Treasurer	0.546
Larson	White	Map 5	2020	State Sup. Ct. 3	0.426
Montoya	Latino	Map 5	2020	State Sup. Ct. 3	0.571
Hutchinson	White	Map 1	2018	U.S. Senate	0.455
Cantwell	Latino	Map 1	2018	U.S. Senate	0.545
Hutchinson	White	Map 2	2018	U.S. Senate	0.455
Cantwell	Latino	Map 2	2018	U.S. Senate	0.545
Hutchinson	White	Map 3	2018	U.S. Senate	0.455
Cantwell	Latino	Map 3	2018	U.S. Senate	0.545
Hutchinson	White	Map 4	2018	U.S. Senate	0.455
Cantwell	Latino	Map 4	2018	U.S. Senate	0.545
Hutchinson	White	Map 5	2018	U.S. Senate	0.460
Cantwell	Latino	Map 5	2018	U.S. Senate	0.540
Trump	White	Map 1	2016	President	0.406
Clinton	Latino	Map 1	2016	President	0.538
Bryant	White	Map 1	2016	Governor	0.423
Inslee	Latino	Map 1	2016	Governor	0.577
Vance	White	Map 1	2016	US Senate	0.383
Murray	Latino	Map 1	2016	US Senate	0.617
Trump	White	Map 2	2016	President	0.406

Candidate	Preferred_Candidate	Map	Year	Contest	Vote
Clinton	Latino	Map 2	2016	President	0.538
Bryant	White	Map 2	2016	Governor	0.423
Inslee	Latino	Map 2	2016	Governor	0.577
Vance	White	Map 2	2016	US Senate	0.383
Murray	Latino	Map 2	2016	US Senate	0.617
Trump	White	Map 3	2016	President	0.410
Clinton	Latino	Map 3	2016	President	0.532
Bryant	White	Map 3	2016	Governor	0.427
Inslee	Latino	Map 3	2016	Governor	0.573
Vance	White	Map 3	2016	US Senate	0.386
Murray	Latino	Map 3	2016	US Senate	0.614
Trump	White	Map 4	2016	President	0.410
Clinton	Latino	Map 4	2016	President	0.532
Bryant	White	Map 4	2016	Governor	0.427
Inslee	Latino	Map 4	2016	Governor	0.573
Vance	White	Map 4	2016	US Senate	0.386
Murray	Latino	Map 4	2016	US Senate	0.614
Trump	White	Map 5	2016	President	0.410
Clinton	Latino	Map 5	2016	President	0.528
Bryant	White	Map 5	2016	Governor	0.428
Inslee	Latino	Map 5	2016	Governor	0.572
Vance	White	Map 5	2016	US Senate	0.393
Murray	Latino	Map 5	2016	US Senate	0.607

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.	C22-5035-RSL Seattle, WA January 13, 2023 9:00 a.m. Motion Hearing

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

APPEARANCES:

For the Plaintiff Soto Palmer:
Mark Gaber
Campaign Legal Center
1101 14th Street NW
Suite 400
Washington, DC 20005

Ernest Herrera
Mexican American Legal Defense and Educational Fund
634 S. Spring Street, 11th Floor
Los Angeles, CA 90014

The single-judge case, which was the so-called statutory only Section 2 claim, went up to the Eleventh Circuit. The three-judge panel decision went up on the jurisdictional docket, on the mandatory appellate docket, to the U.S. Supreme Court. And Alabama asked the Supreme Court to grant cert before judgment and take the Eleventh Circuit case from the Eleventh Circuit, and hear the two consolidated, which the Supreme Court did.

And, Your Honor, just to give you a sense, the grant of cert before judgment I think has only been done 19 or 20 times in the last 45 years. So it's a pretty rare action by the Supreme Court; yet the Supreme Court not only did that, it also stayed the case. Then subsequently, in July of 2022, in a case where actually Phil and I were representing the state of Louisiana, the Supreme Court did the same thing. There was a single-judge Section 2 case, where the judge ordered a remedy of an additional majority-minority district. And the court not only stayed the case, but also granted cert before judgment. And is holding the case pending *Merrill*.

So that ties into our stay motion, which is also pending before the court. So there are a couple things, I don't know if the court has questions on either the stay or the amendment, but I think they're both in play here, for a lot of the same reasons.

THE COURT: Yeah, I asked my law clerk to call Chief

Justice Roberts and say: When are you going to decide that *Merrill* case? But we haven't heard back yet.

MR. TORCHINSKY: Your Honor, I actually think that -- there was an article this morning from one of the Supreme Court Reporters. This is actually the longest time since -- I forget in how many years -- that the Supreme Court hasn't started issuing opinions from this term of court yet. But obviously we all anticipate they will issue all of these opinions by the end of June.

THE COURT: And you want to do a three-judge panel in both the cases?

MR. TORCHINSKY: So, Your Honor, to be clear, Mr. Stokesbary is representing the plaintiffs in Garcia. Mr. Gordon and I are not. But we've talked to Mr. Stokesbary about it, and if our cross claim is allowed to proceed in this case, what we would do, Mr. Stokesbary has agreed that Garcia would be dismissed. And then basically all of the issues are here in front of the same court.

And I think -- this was cited in our brief, but in *Levy v. FCI Lender Services*, the district court there, which was a Southern District of California decision from 2019, kind of went through when you should grant leave to amend, or when you should permit amendment. And in that case it was the same thing we had here, right, which was a scheduling order that allowed amendment of pleadings, which we complied with.

And you've got Rule 15, which says leave to amend is supposed to be freely granted.

And then in the Ninth Circuit, and according to the *Ditto* (phonetic) case, the court is supposed to look to prejudice to the defendants. And in this case my understanding of the state's position is they like these two claims heard together, because they're really hard to distinguish factually. It's just the legal calls that the court has to make, based on the same set of facts.

So I think what the state would like to avoid, if I understand my colleague's position correctly, is they don't want to have a trial in May where you go through all of the race targets that were done here, and why the state thought that they should do race, then have a decision that says, you didn't consider -- you didn't consider race enough. And then have another trial literally four weeks later, in front of a different court, where the facts are the same, but the argument from the plaintiffs in that case is, you considered race too much, right? Because then you run the risk of, frankly, conflicting judgments.

Because let's just hypothetically say, Your Honor, you decide they're right here and the state didn't consider race enough in drawing District 15. And you order an even more majority-minority district to be created in District 15. And the other two judges on the three-judge panel, four weeks

later say: No, that's ridiculous, we don't think Section 2 justified what they did there in the first place, and we're ordering a new map there to be drawn.

Now the state runs the risk of inconsistent judgments from two different courts, both sitting in the Western District of Washington. Because your decision in this case wouldn't be binding on the other two judges in Garcia. So, you know, it makes sense and a matter of judicial economy, to have all of these claims consolidated and heard in one place.

THE COURT: Okay. Thanks. Who is going to argue from the State of Washington?

MR. HUGHES: I will, Your Honor.

THE COURT: Okay. Great, Mr. Hughes.

MR. HUGHES: Your Honor, Andrew Hughes. May it please the court. I was going to defer first to plaintiffs, but since Mr. Torchinsky just put the state's position at issue, it makes sense for me to go now.

THE COURT: Sure.

MR. HUGHES: So I think without endorsing Mr. Torchinsky's characterization necessarily of the claims, I think the issue of inconsistent judgments is certainly a factor. But our concern is really, frankly, more basic than that. Both cases turn on the application of the Gingles factors. We have an expert on the Gingles factors. It doesn't make sense for us to put our expert up, pay him to

testify in a trial, only to then do the whole thing again four weeks later.

And I don't really understand -- I appreciate plaintiffs' jurisdictional arguments, but I don't really understand why they pose an issue here. And the reason why I say that is because I don't understand why Your Honor sitting, as a member of the three-judge panel that would be hearing the gerrymandering claims, couldn't simply issue your own order on the Section 2 claims, and the panel can issue its own order on the *Shaw*-style gerrymandering claims.

And I've tried to think of sort of the counter arguments to this. And certainly one can theoretically think of difficult questions about, well, what if there's an objection and Your Honor finds it meritorious, but the other two judges on the panel don't find it meritorious and how would that be dealt with? But as a practical matter, I can't imagine the three judges are going to, first of all, disagree all that much; second of all, necessarily want to huddle up every time there's a leading objection. Probably makes sense, without presuming to tell Your Honor how to do his job, for sort of one judge to handle the lion's share of the objections.

And third, for more serious evidentiary objections, whether something is hearsay, for example, there's no reason why, if there's a disagreement between Your Honor and the other members of the panel, one of you -- you couldn't simply

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
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AT SEATTLE

SUSAN SOTO PALMER, et al.

Plaintiffs,

v.

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Defendants,

and

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

Intervenor-Defendants.

NO. 3:22-cv-5035-RSL

STATE OF WASHINGTON'S TRIAL BRIEF

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
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Spanish-surnamed voters prevails in three of the ten contests." Ex. # 601 at p. 16. Publicly available data from Dave's Redistricting—the software Commissioners used to draft and share maps—confirms this conclusion, suggesting that LD 15 would have voted fairly consistently against Hispanic-preferred candidates in statewide races from 2016 to 2020, albeit by relatively narrow margins. WA 2022 State Legislatures, Dave's Redistricting LLC, available at https://davesredistricting.org/maps#viewmap::3e3c5f5c-3a83-4847-b1d8-5328fb3b9e31 (last accessed May 31, 2023).

Furthermore, successful Section 2 and WVRA lawsuits in Yakima, Yakima County, and Pasco provide compelling evidence that, historically, Hispanic voters in and around the Yakima Valley have been prevented from electing the candidates of their choice. *Montes*, 40 F. Supp. 3d at 1409–1415; Partial Consent Decree, *Glatt*, No. 4:16-CV-05108-LRS, Dkt. # 16; *Aguilar*, No. 20-2-0018019. A recent history of Section 2 violations is itself highly significant. But *Montes* also includes detailed findings under the Senate Factors. The Court there pointed to historical voting-related discrimination (most notably a 2004 lawsuit against Yakima County for failing to provide Spanish-language voting materials), evidence of racially polarized voting, significant statistical evidence of socio-economic disparities between whites and Hispanics in Yakima, and the lack of electoral success of Hispanic candidates in Yakima to conclude that the Senate Factors "weigh firmly" in favor of Section 2 liability. *Montes*, 40 F. Supp. 3d at 1414. The State cannot dispute that these factors point in the same direction here. *See* Ex. # 004 (Expert Report of Dr. Josué Estrada).[7]

In summary, the State has no basis to dispute that the evidence at trial will demonstrate that the *Soto Palmer* Plaintiffs have satisfied the three *Gingles* preconditions for a Section 2 vote

[7] This is not to say that the State agrees with or adopts the conclusions of *Soto Palmer* Plaintiffs' Senate Factors Expert, Dr. Josué Estrada, but merely that many of the facts that were dispositive in *Montes* are essentially undisputed here.

dilution claim and that, under the totality of the circumstances, Hispanic voters in LD 15 are less able to participate in the political process and elect candidates of their choice than white voters.

B. *Soto Palmer* Plaintiffs Cannot Carry Their Burden to Prove That the Redistricting Commission Intentionally Discriminated Against Latino Voters

While the State does not dispute that the *Soto Palmer* Plaintiffs can establish a discriminatory result, *Soto Palmer* Plaintiffs will fall far short of proving discriminatory intent within the meaning of Section 2.

Soto Palmer Plaintiffs face a daunting burden of proof. To prevail on this claim, they must overcome "the presumption of good faith that must be accorded legislative enactments." *Miller v. Johnson*, 515 U.S. 900, 916 (1995). This requires them to prove that "a discriminatory purpose has been a motivating factor in the decision" to adopt LD 15. *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977); *see Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2349 (2021) (applying *Arlington Heights* framework to discriminatory intent claim under Section 2 of the VRA). "'Discriminatory purpose' . . . implies more than intent as volition or intent as awareness of consequences . . . . ***It implies that the decision maker . . . selected or reaffirmed a particular course of action at least or in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable [minority] group***." *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979) (emphasis added) (internal citation omitted); *accord Veasey v. Abbott*, 830 F.3d 216, 231 (5th Cir. 2016) (relying on *Feeney* in considering a discriminatory intent claim under Section 2 and recognizing that "[l]egislators' awareness of a disparate impact on a protected group is not enough: the law must be passed *because of* that disparate impact"); *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 220 (4th 2016) (similar); *see also Hunter v. Underwood*, 471 U.S. 222, 228 (1985) ("Proving the motivation behind official action is often a problematic undertaking."). *Soto Palmer* Plaintiffs cannot meet their burden to prove discriminatory purpose under this demanding standard.

As a threshold matter, a critical decision maker for purposes of this analysis in the Legislature, and the *Soto Palmer* Plaintiffs will offer scant, if any, evidence of the Legislature's intent. And even if it were appropriate to focus solely on the Commission, the evidence at trial will reveal no discriminatory motives on the part of the Commissioners. In fact, the evidence will show that each of the Commissioners intended—and endeavored—to comply with the VRA.

1. There is no evidence that the Washington State Legislature intentionally discriminated against Latino voters

As an initial matter, the Redistricting Plan at issue in this litigation is not the plan passed by the Commission. Instead, the operative version of the Redistricting Plan is an amended version of the Commission's plan—adopted not by the Commission but by the Washington State Legislature. *See* H.R. Con. Res. 4407. Notably, in exercising its statutory prerogative to adopt an amended plan under Wash Rev. Code § 44.05.100, the Legislature made multiple changes to LD 15 but elected to keep the demographic composition essentially the same. H.R. Con. Res. 4407 at 71–77. This suggests that the Legislature affirmatively decided to maintain the demographics proposed by the Commission. *See Am. Cas. Co. of Reading, Penn. v. Nordic Leasing, Inc.*, 42 F.3d 725, 732 (2d Cir. 1994) ("Where sections of a statute have been amended but certain provisions have been left unchanged, we must generally assume that the [L]egislature intended to leave the untouched provisions' original meaning intact.").

Despite the Legislature's deciding role in enacting the Redistricting Plan at issue, the State anticipates that the *Soto Palmer* Plaintiffs will focus exclusively on the intent of the Commission and fail to offer *any* evidence as to the Legislature's intent, let alone evidence that any legislator intended to discriminate. Furthermore, "[w]here the court is asked to identify the intent of an entire state legislature, as opposed to a smaller body, the charge becomes proportionately more challenging." *Veasey*, 830 F.3d at 233. Absent a showing that the Legislature intentionally discriminated against Latino voters in amending the Commission's plan and adopting the operative Redistricting Plan, *Soto Palmer* Plaintiffs' intentional discrimination

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Hon. Robert S. Lasnik

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Defendants,

and

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

Intervenor-Defendants.

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

JOINT PRETRIAL STATEMENT AND [PROPOSED] ORDER

I. JURISDICTION

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

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

II. CLAIMS AND DEFENSES

Plaintiffs will pursue the following claims at trial:

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

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

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

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

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

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

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

Intervenor-Defendants will raise the following defenses at trial:

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

   a. That a minority group is sufficiently large and geographically compact to constitute a majority in a reasonably configured Legislative District 15 ("LD" 15");

   b. That the same minority group is politically cohesive; and

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

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

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

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

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

6. Plaintiffs seek inappropriate relief, including relief that is not within Intervenors or any of the present Defendants' authority to accomplish.

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

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

III. ADMITTED FACTS

The following facts are admitted by the parties:

Party Information

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

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

be as small as possible; (b) Districts should be composed of convenient, contiguous, and compact territory. Land areas may be deemed contiguous if they share a common land border or are connected by a ferry, highway, bridge, or tunnel. Areas separated by geographical boundaries or artificial barriers that prevent transportation within a district should not be deemed contiguous; (c) Whenever practicable, a precinct shall be wholly within a single legislative district. RCW 44.05.090.

61. Additionally, the Commission's redistricting plan "shall not be drawn purposely to favor or discriminate against any political party or group." Wash. Const. art. II, § 43(5).

62. After the approval of a redistricting plan by three of the voting members of the Commission, the Commission submits its plan to the Washington Legislature. RCW 44.05.100.

63. Once a plan is submitted, the legislature has thirty days during any regular or special session to amend the Commission's plan by an affirmative vote of two-thirds of the members in each house. *Id.* After such 30-day period, "[t]he plan approved by the commission, with any amendment approved by the legislature, shall be final . . . and shall constitute the districting law applicable to this state for legislative and congressional elections, beginning with the next elections held in the year ending in two." *Id.*

64. The amended edits to the plan by the legislature "may not include more than two percent of the population of any legislative or congressional district." *Id.*

65. Following the passage of a map, the Commission is required to cease operations by July 1st. *Id.*

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

67. All districting plans must comply with the United States Constitution.

68. All districting plans must comply with the federal Voting Rights Act.

69. The Secretary of State is the State of Washington's current custodian of the Commission's official record for purposes of re-precincting and election administration. RCW 44.05.110.

Activities of the 2021 Commission

70. Commissioners Brady Piñero Walkinshaw and April Sims were appointed to the Washington Redistricting Commission on December 10, 2020, as the two Democratic Party representatives.

71. On January 15, 2021, Paul Graves and Joe Fain were appointed to the Washington Redistricting Commission as the two Republican Party representatives.

72. The four voting members, Brady Piñero Walkinshaw, April Sims, Paul Graves, and Joe Fain, voted unanimously to appoint Sarah Augustine as Chair of the 2021 Washington Redistricting Commission on January 30, 2021.

73. Between February 2021 and November 16, 2021, the Commission had Regular Business Meetings, Special Business Meetings, and Public Outreach Meetings to develop districting plans.

74. On September 21, 2021, all four voting Commissioners each submitted publicly proposed legislative maps.

75. According to adjusted 2020 Census data, Commissioner Fain's September 21, 2021 legislative map proposal for LD15 had a total population of 157,196. According to the 2020 Census, LD15 had an HVAP of 48.8%. According to the 2020 ACS 5-Year estimates,

LD15 had an HCVAP of 35.5%, and according to the 2019 5-Year ACS estimates, LD15 had an HCVAP of 33.8%.

76. According to adjusted 2020 Census data, Commissioner Graves's September 21, 2021 legislative map proposal for LD15 had a total population of 157,249. According to the 2020 Census, LD15 had an HVAP of 48.3%. According to the 2020 ACS 5-Year estimates, LD15 had an HCVAP of 36.3%, and according to the 2019 5-Year ACS estimates, LD15 had an HCVAP of 34.2%.

77. According to adjusted 2020 Census data, Commissioner Sims's September 21, 2021 legislative map proposal for LD15 had a total population of 157,207. According to the 2020 Census, LD15 had an HVAP of 59.6%. According to the 2020 ACS 5-Year estimates, LD15 had an HCVAP of 46.1%, and according to the 2019 5-Year ACS estimates, LD15 had an HCVAP of 44.7%.

78. According to adjusted 2020 Census data, Commissioner Walkinshaw's September 21, 2021 legislative map proposal for LD14 had a total population of 157,240. According to the 2020 Census, LD14 had an HVAP of 55.5%. According to the 2020 ACS 5-Year estimates, LD14 had an HCVAP of 41.5%, and according to the 2019 5-Year ACS estimates, LD14 had an HCVAP of 40.4%.

79. On October 25, 2021, Commissioners Piñero Walkinshaw and Sims submitted revised maps.

80. According to adjusted 2020 Census data, Commissioner Sims's October 25, 2021 legislative map proposal for LD14 had a total population of 157,245. According to the 2020 Census, LD14 had an HVAP of 67.8%. According to the 2020 ACS 5-Year estimates, LD14 had

an HCVAP of 53.0%, and according to the 2019 5-Year ACS estimates, LD14 had an HCVAP of 51.6%.

81. According to adjusted 2020 Census data, Commissioner Walkinshaw's October 25, 2021 legislative map proposal for LD14 had a total population of 157,252. According to the 2020 Census, LD14 had an HVAP of 67.8%. According to the 2020 ACS 5-Year estimates, LD14 had an HCVAP of 53.0%, and according to the 2019 5-Year ACS estimates, LD14 had an HCVAP of 51.6%.

82. In House Concurrent Resolution 4407 ("HCR 4407"), the legislature amended the map submitted by the Commission to the Washington Supreme Court; it added 7 Census Blocks to Legislative District 15 and removed 2 Census Blocks. Each of the added and removed Census Blocks had zero (0) population.

83. When HCR 4407 was brought up for a vote in the Washington State House, the House Majority Leader, the first of three representatives to speak about the measure before it was voted upon, stated that, "[T]hese [changes] are technical in nature" and that "As a legislature, we really have two options in this redistricting process. If we do nothing, then the maps come into being without our vote. But they come into being without those changes that were recommended by the county commissioners. By making these—by adopting this resolution, we adopt the maps as well as the changes that were suggested by the county commissioners, which are important to get done." The House Minority Leader, the final of three representatives to speak, said, "We have looked at these, checked with our staff, and believe them to not make a partisan difference . . . I'm guessing that many of these very minor adjustments would have been either never recognized or corrected by the mapmakers in previous years."

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

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

Map Proposals

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

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

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

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

determined by importing the shapefile for that proposal into Dave's Redistricting, was LD 15, which had a Hispanic or Latino CVAP of 34.2% according to the 2019 5-Year ACS estimates and 36.3% according to the 2020 5-Year ACS estimates.

90. The southcentral Washington (as defined by Plaintiffs) district with the highest Hispanic or Latino CVAP percentage in Commissioner Fain's September 21, 2021 proposal, determined by importing the shapefile for that proposal into Dave's Redistricting, was LD 15, which had a Hispanic or Latino CVAP of 33.8% according to the 2019 5- Year ACS estimates and 35.5% according to the 2020 5-Year ACS estimates.

91. The southcentral Washington (as defined by Plaintiffs) district with the highest Hispanic or Latino CVAP percentage in Commissioner Sims's September 21, 2021 proposal, determined by importing the shapefile for that proposal into Dave's Redistricting, was LD 15, which had a Hispanic or Latino CVAP of 44.7% according to the 2019 5-Year ACS estimates and 46.1% according to the 2020 5-Year ACS estimates.

92. The southcentral Washington (as defined by Plaintiffs) district with the highest Hispanic or Latino CVAP percentage in Commissioner Walkinshaw's September 21, 2021 proposal, determined by importing the shapefile for that proposal into Dave's Redistricting, was LD 14, which had a Hispanic or Latino CVAP of 40.4% according to the 2019 5-Year ACS estimates and 41.5% according to the 2020 5-Year ACS estimates.

93. The southcentral Washington district (as defined by Plaintiffs) with the highest Hispanic or Latino CVAP percentage in Commissioner Sims's October 25, 2021 proposal, determined by importing the shapefile for that proposal into Dave's Redistricting, was LD 14, which had a Hispanic or Latino CVAP of 51.6% according to the 2019 5- Year ACS estimates and 53% according to the 2020 5-Year ACS estimates.

94. The southcentral Washington (as defined by Plaintiffs) district with the highest Hispanic or Latino CVAP percentage in Commissioner Walkinshaw's October 25, 2021 proposal, determined by importing the shapefile for that proposal into Dave's Redistricting, was LD 14, which had a Hispanic or Latino CVAP of 51.6% according to the 2019 5-Year ACS estimates and 53% according to the 2020 5-Year ACS estimates.

95. On or about October 19, 2021, the Washington State Senate Democratic Caucus circulated a presentation slide deck bearing the name, title and contact information of Matt Barreto.

96. Dr. Barreto's slide deck included a slide that stated that the maps proposed by Commissioners Graves and Fain on September 21, 2021 displayed "[t]ext-book 'cracking' of [the] Latino population" in the Yakima Valley.

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

98. LD 14 in the Enacted Plan has a Hispanic or Latino CVAP of 22.6% according to 2019 5-year ACS estimates and 23.1% according to 2020 5-year ACS estimates.

Elections in LD15 and Yakima Valley/Pasco Area

99. Elections for State Representatives are held every two years.

100. In elections for the Washington State Legislature, candidates identify their partisan preference. Primary and general elections often feature at least one candidate who "Prefers Democratic Party" and at least one candidate who "Prefers Republican Party."

101. In 2012, Pablo Gonzalez, who preferred the Democratic party, lost a race for State Representative in Legislative District 15 to David Taylor, the incumbent, who preferred the Republican party.

102. In the 2014 State Senate election for Legislative District 15, Gabriel Muñoz, who preferred the Democratic party, lost to Jim Honeyford, the incumbent, who preferred the Republican party.

103. In the 2014 State Representative election for Legislative District 15, Teodora Martinez-Chavez, who preferred the Democratic party, lost to David Taylor, the incumbent, who preferred the Republican party.

104. Evangelina Aguilar, who preferred the Democratic party, was a candidate for state senate in Legislative District 15 in 2018, and received 39.41% of the vote in the general election.

105. In the 2018 State Senate election for Legislative District 15, Evangelina Aguilar lost to Jim Honeyford, the incumbent, who preferred the Republican party.

106. Pablo Gonzalez, Teodora Martinez-Chavez, and Evangelina Aguilar have each been candidates for state legislative positions in the former Legislative District 15 and each did not win.

107. Susan Soto Palmer, who prefers the Democratic party, ran for State Representative in Legislative District 14 in 2016 against the incumbent representative who preferred the Republican party, and did not win.

108. Maria Cantwell was a candidate for U.S. Senate in 2018.

109. Jesse Palacios was elected to the Yakima County Board of Commissioners in 2002.

110. Prior to the last election, Legislative District 15 was represented in the State House by Representatives Bruce Chandler and Jeremie Dufault, and in the State Senate by Jim Honeyford.

111. Representative Mary Skinner identified as Latina, and was elected to the State House from LD 14 as a Republican in elections she ran in from 1994 until 2006.

112. "Skinner" is not included in the U.S. Census Bureau's list of Spanish surnames.

113. LD 13, which includes a portion of Yakima County, is currently represented in the State House by Intervenor Alex Ybarra, who identifies as Latino.

114. The 2022 Elections took place under the Enacted Plan. In LD 15, Nikki Torres, who preferred the Republican party, prevailed over her opponent, Lindsey Keesling, who preferred the Democratic party, in the State Senate race by 67.68% to 32.09%.

115. Presently, Legislative District 15 is represented in the State House by Representatives Bruce Chandler and Bryan Sandlin, and in the State Senate by Nikki Torres.

116. Legislative District 14 is currently represented in the State House by Chris Corry and Gina Mosbrucker, and in the State Senate by Curtis King.

Other Activities in the Area

117. Pasco Police shot and killed Antonio Zambrano-Montes.

118. During a September 21, 2021, Franklin County Commissioners' meeting, Commissioner Mullen stated, in reference to the discussion of Latino citizen voting age population in the current commissioner districts, that he "believes that there are non-citizens that are voting in the elections." *See* Franklin County Commissioners Meeting (Sept. 21, 2021), https://media.avcaptureall.cloud/meeting/e3e60dfb-87e0-4b8f-bb49-14dbe5167045 at 1:12:00-1:12:30. 257.

Other Litigation

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

120. In *Montes v. City of Yakima*, the court concluded that Yakima's at-large voting system for city council elections violated Section 2 of the VRA. 40 F. Supp. 3d 1377 (E.D. Wash.

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

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

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

2024 Elections

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

Nos. 23-35595 & 24-1602

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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Plaintiffs-Appellees,

v.

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and

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Intervenor-Defendants-Appellants

On Appeal from the United States District
Court for the Western District of Washington
No. 3:22-cv-05036
Hon. Robert S. Lasnik

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

February 3, 2023

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BENANCIO GARCIA III,)
)
Plaintiff,)
)
v.) No. 3:22-cv-5152-RSL
)
STEVEN HOBBS, in his official)
capacity as Secretary of State)
of Washington, and STATE OF)
WASHINGTON,)
)
Defendants.)
)
and)
)
SUSAN SOTO PALMER, et al.,)
)
Plaintiffs,)
)
v.) No. 3:22-cv-5035
)
SECRETARY OF STATE STEVEN)
HOBBS, in his official)
capacity as Secretary of State)
of Washington, et al.)
)
Defendants.)

VIDEOCONFERENCE DEPOSITION UPON ORAL EXAMINATION OF

BENANCIO GARCIA III

Tacoma, Washington
(All participants appeared via videoconference.)
DATE TAKEN: FEBRUARY 3, 2023
REPORTED BY: CINDY M. KOCH, RPR, CRR, CCR #2357

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* * * * *

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changes anything for you.
A. I could be mixing him up with one of his brothers, so I apologize if I am. There's a large family, and -- you know, so I -- I am -- I'm sure I know who you're talking about. He was former law enforcement out of Wapato.
Q. Have you ever discussed redistricting with Mr. Campos?
A. No.
Q. Do you know his brother Pablo, or Paul, Campos?
A. I know a few of his brothers, but the names sometimes skip me, so...
Q. I hear you.
MR HUGHES: This would be a good time for me to take a break, if it works for everyone else.
Do you want to take a break now?
THE WITNESS: That would be fine with me.
(Recess from 10:00 a.m. to 10:07 a.m.)
E X A M I N A T I O N (Continuing)
BY MR. HUGHES:
Q. Mr. Garcia, welcome back.
A. Thank you.
Q. Do you believe that you were harmed by the current boundaries of LD 15?
A. Yes.

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Q. And how?
A. Due to the fact it's illegal gerry- -- racial gerrymandering, that's how I'm harmed.
Q. Okay. Can you say more about that?
A. You know, I -- being part of LULAC, like I told you, the United Latin American Citizens, we had gotten a chapter there. I was familiar with at least knowing that LULAC, which is the oldest Hispanic organization in the country, had felt the same -- had the same feelings I did when, you know, at that time they taken Perry, Governor Perry, on a civil litigation -- civil litigation, and defended the rights of American voters. So I feel the same way in this case.
Q. In this -- oh, sorry. Go ahead.
A. I just feel the same way.
Q. What's your goal in this lawsuit?
A. The goal is to have it adjudicated to determine to the people that, you know, if I'm right or wrong on my beliefs, that this was done illegal ger- -- racial gerrymandering, at least I did my due diligence, and like I -- me protecting my country in combat, to me protecting my rights -- voting rights.
Q. Do you want to change the map?
A. Yes.
Q. How?

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A. I want to change the map to where I feel that it was probably -- its original, the way it originally was, as I -- you know, as a voter. So hopefully it goes back, but that will be up to the court system to decide whether I'm right or wrong.
Q. So, Mr. Garcia, is your goal in this lawsuit then to have the map set back to the -- the map that was in effect from 2012 to whenever this new map came into effect?
A. Well, the goal in my lawsuit is to determine whether I am right in my beliefs that this was made illegally through racial gerrymandering for a decision to be made amongst my peers for the courts. That is my goal. Because I strongly believe in protecting our freedoms.
Q. And if you are right, if the Court finds you are right, what do you want to happen?
A. Well, that we go through -- if the courts have -- findings are that I am correct, then we go through the process again to determine the map.
Q. Understood.
Is there any -- never mind.
Mr. Garcia, do you know Nikki Torres?
A. I do know her, yes.
Q. How do you know her?

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A. Well, running through the campaign. So you meet a lot of people, you know. So I met her in Tri-Cities when I was campaigning, at a parade.
Q. And Ms. Torres is your state senator now?
A. Yes.
Q. Okay. So I will do her the honor of calling her Senator Torres then.
A. Okay.
Q. Do you like Senator Torres?
A. Well, she was fine to me, so we met. I don't know her personally, but she seemed like a nice person, so...
Q. Well, I won't ask you how you voted because I think that's probably private, but do you like having Senator Torres as your state rep- -- state senator?
A. You know, Ms. Torres, I am fine with. She seems nice.
Q. Do you want Ms. Torres to keep representing you?
A. Well, I will say no.
Q. Why is that?
A. Because I believe the redistricting was illegal gerrymandering. It's not on the individual themselves. It is the fact that I believe it was racially illegally gerrymandered. That's my problem.

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It's got nothing to do with any personal representative, has nothing to do with the fact if Jeremie Dufault is no longer so much the representative. It's the fact that, in my core beliefs, I strongly believe in following our constitution, and I -- and I strongly believe in defending those rights. So it's got nothing to do personally with anyone.

Q. Understood.

I want to switch gears just a little bit. You said you're aware of the Soto Palmer v. Hobbs case; correct?

A. Yes. When I got served the papers, and I mean by that is, I just read where I had to be, so I -- you know, so that's what I mean.

Q. Do you have any understanding of what the Soto Palmer v. Hobbs case is about?

A. No.

Q. You haven't read any news articles about it?

A. No.

Q. Okay. I asked you earlier about Jose Trevino, Alex Ybarra, and Ismael Campos, and you recall that discussion?

A. Yes, I do.

Q. Are you aware that Messrs. Trevino, Ybarra, and Trevino have intervened as defendants in the Soto Palmer

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litigation?

A. I'm aware in the sense that I was served the paperwork, but I -- I didn't look into -- I mean, I -- all I looked at basically is where I had to be, and the time of the deposition was going to be. I didn't look into anything more than that.

Q. So you said you were not aware of the Soto Palmer litigation until you got your subpoena; correct?

A. That's correct.

Q. And when did you get your subpoena?

A. Last week.

Q. Okay. So the last week of January?

A. Yes.

Q. Did you ever agree that you would dismiss your lawsuit if Messrs. Trevino, Ybarra, and Campos were allowed to bring racial gerrymandering claims in the Soto Palmer case?

MR. STOKESBARY: I'm going to object to the extent this calls for attorney-client communication, and instruct you not to answer that question, Ben.

MR. HUGHES: I'm going to have to push back on that, Drew. I don't know how him making a decision about whether he would dismiss his lawsuit is necessarily attorney-client privileged. It's a yes or

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no question.

MR. STOKESBARY: Well, I -- Andrew, I thought the question said, did you discuss with your lawyer. That sort of is the -- the --

MR. HUGHES: No. No. Let me do the question again. I apologize if I misspoke.

BY MR. HUGHES:

Q. Mr. Garcia, did you ever agree that you would dismiss your lawsuit if Messrs. Trevino, Ybarra, and Campos were allowed to bring racial gerrymandering claims in Soto Palmer v. Hobbs?

A. No.

Q. Okay. I'm going to show you --

A. I --

Q. Oh, go ahead. Sorry.

A. No. I brought this lawsuit on the fact that -- that I believe that there was racial gerrymandering occurring, and that I would see this all the way through.

Q. That's important to you, that you -- you are going to see this lawsuit all the way through?

A. As important as it was for me to run for U.S. Congress because I believe I will do what is the best interests of 4th District. It's as important to me that when I signed on to this lawsuit, that I would see to

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the end what would occur. There's no wavering on my completion of this.

Q. Understood.

I'm going to show you a document real quick. Let me make sure I have the right one before I share my screen.

A. I'm sorry. I only have cell phone, and my glasses are having difficulty viewing the document.

Q. Okay. Do you see a document on the screen right now?

A. Yes, I do. Well, it went off the screen.

Q. My Zoom quit unexpectedly. Let me try this one more time.

Okay. Can you see a document on my screen, Mr. Garcia?

A. Yes, I do.

Q. Are you able to read it?

A. Yes. The defendants, Jose, Ismael, and Alex Ybarra.

Q. And you see it says, "Intervenor Defendants' Opposition to Plaintiffs' Motion to Bifurcate and Transfer, Strike, and/or Dismiss Intervenors' Crossclaim"?

A. I do see that.

Q. Have you ever seen this document before?

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A. I saw this document. It was served when I got my subpoena.
Q. This particular document was served with your subpoena?
A. Let me see. It might not be. Not that particular document, no.
Q. Okay. So you've never seen this document before then?
A. No.
Q. Okay. I want to scroll down to Page 4. Do you see -- well, let me -- hang on. Let me -- do you see here -- this is actually Page 7 -- that this is signed by Andrew Stokesbary?
A. Correct.
Q. That's your lawyer in this case?
A. That's correct.
Q. And it says here that Mr. Stokesbary also represents intervenor defendants?
A. Yes.
Q. So you understand that he represents the intervenor defendants in the Soto Palmer case?
A. Well, obviously he put it in writing, yes, that he is.
Q. Okay. So I want to look at Page 4 then of this document.

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A. Uh-huh.
Q. And it says -- do you see where I'm highlighting? "Intervenors' counsel represents that Garcia will be voluntarily dismissed once it is clear that this Court will allow Intervenors' Fourth Amendment Crossclaim to proceed in this case"?
Do you see that?
A. Could you highlight that again?
Q. Uh-huh.
A. I'm trying to read it. I'm sorry. It's off a cell phone and -- that is new news to me.
Q. You never agreed to this?
A. I will never agree to not be part -- I agreed that I would finish this all the way through to --
Q. So this representation was made without your authorization then?
A. Yes.
MR. HUGHES: Okay. That's all I have. I'll stop screen sharing. And, Mark, the witness is yours.
MR. GABER: Thank you.
EXAMINATION
BY MR. GABER:
Q. Mr. Garcia, it's nice to meet you. My name is Mark Gaber. I represent the plaintiffs in the Soto Palmer case, and so we sent you the subpoena. And

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I just want to, again, apologize for the misunderstanding that you were under the impression you needed to travel from your home. You could have done this today from any computer anywhere.
So I do thank you for traveling, and hope at least you've had a nice visit. And I believe you're in Tacoma; is that right?
A. Yes.
Q. And so I just want to -- I'll try not to repeat anything that Mr. Hughes asked you, but it's always hard when there's two people taking a deposition like this, so if I do repeat anything, I apologize.
So I just wanted to clarify. I know you said that you've moved a couple times. Where do you currently reside?
A. 311 Birch Avenue, Grandview, Washington 98930.
Q. And is that your home that had the fire?
A. Yes.
Q. Has the -- have the fire damage been remediated?
A. About 90 percent, somewhere around there.
Q. And do you intend to remain a resident there?
A. Yes.
Q. Now, you mentioned that you had a conversation with Paul Graves.

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Had you known Paul before that conversation?
A. No, not that I'm aware of.
Q. And what do you know about Mr. Graves' involvement as -- or his work as a commissioner, as a redistricting commissioner?
A. Other than he's a commissioner, that's -- that's it. I mean, there wasn't much discussion.
Q. Did you know that Mr. Graves and his staff were responsible for drawing District 15 in the adopted plan?
A. I am aware of that.
Q. Did it strike you as unusual that he was contacting you to discuss that the plan he had drawn was a racial gerrymander?
A. Well, he didn't contact me. I contacted him.
Q. Your understanding was that he was expecting your phone call; is that right?
A. Well, I don't know if he was expecting my phone call. It's been a little while, so I can't recall the whole thing. I know that Maia had given me his number.
Q. Okay.
A. So it's been a little while, so I apologize for that.
Q. But he had a conversation with you, and you took away from it that he was sympathetic to what you were expressing, that you thought there was a problem

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that District 15 was a racial gerrymander; is that -- am I understanding that correctly?

A. Yes.

Q. And at the time, did you talk with him about the fact that he was heavily involved in drawing District 15?

A. Well, obviously he was heavily involved in drawing, but I know that the committee certainly did not go into complete agreement. There was a lot of issues on that for -- and you could look at the newspaper and you could see that they had passed the deadline, which was state law, in which they were supposed to adjudicate, to where it actually went to the courts.

Q. Are you aware that Mr. Graves has testified in this litigation that he was involved in lighting the fire for your lawsuit?

MR. HUGHES: Object. Misstates the evidence, misstates Mr. Graves' testimony.

A. I'm sorry. Say again? I didn't hear that question.

BY MR. GABER:

Q. Are you aware that Mr. Graves has testified that he helped light the fire for your lawsuit?

MR. HUGHES: Objection. Misstates Mr. Graves' testimony.

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A. No, I didn't know Mr. Graves had taken, you know -- had done a deposition. The same thing that, you know -- for example, a misunderstanding, being here in Tacoma today, when I didn't have to be here. So, you know, obviously there's not much communication until the last minute. So...

BY MR. GABER:

Q. But do you understand that Mr. Graves, nevertheless, thinks that the plan is not, in fact, a racial gerrymander?

A. He has a right to his own opinion. So I -- I don't know what -- what he -- what he -- what he said under his deposition.

Q. Was it your impression, from your phone call with him, that he wanted you to file a lawsuit?

A. I -- I won't say that that was the impression, that he -- that he wanted me to file. But I was under the impression that he wasn't content with the redistricting. That was just my -- from -- from -- you know, we spoke probably about five minutes or so.

Q. Do you know why Ms. Espinoza asked you to call him?

MR. STOKESBARY: Objection as to form.

A. Could you repeat that question again?

////

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BY MR. GABER:

Q. Yeah. Do you know why Ms. Espinoza suggested that you call Mr. Graves?

A. I believe that -- that she was concerned about the redistricting.

Q. What was the purpose of calling Mr. Graves? I mean, you had a five-minute conversation with him. Did -- do you under- -- do you have any understanding as to what was to come of that conversation?

A. You know what? No. Because she was -- Maia was very brief about it, and I mean very brief. And like I said, you know, I thought the initial conversation was going to be about the -- the books, pamphlets that she had for civics that I was interested in, because I called her, but I knew she was busy because she had ran for state representative for OSPI, public school -- office of school instructions. So, you know, I knew that. I was hoping she would give me a call back, and I was hoping to get a box of those pamphlets, you know.

Q. And I don't remember if you were asked this, so I apologize if I'm repeating something.

How did you first get in touch with Mr. Stokesbary? Did you call him or did he contact you?

A. No, I think it would have been -- I think --

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well, I shouldn't say "I think," but I probably called him, but I don't remember the mechanism of how because, you know -- or who gave me the number or whatever the case was. That, I don't recall.

I mean, I spoke to a lot of people. I'm very passionate about civil rights. And, you know, I had so many things going on other than a political -- running for congress, you know, dealing with moving five locations, basically, during this whole process. So I had a lot of things happening at one time. So I can't --

Q. And just to clarify on the conversation with Mr. Graves, was that after the map was already in place, after the State Supreme Court had said, okay, that's the map?

A. No. That -- that was before, you know, before it went to -- way before.

Q. Okay.

A. My -- yeah, that was way before. We're talking in the wintertime.

Q. And --

A. And so --

Q. Go ahead.

A. Sorry.

Q. Winter of -- so just to put a -- be more

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specific, what -- generally what month and year?
A. Before my Complaint was filed. It was months before that.
Q. Would that have been in 2021 or 2022?
A. The Complaint was filed --
Q. I think the Complaint was in the springtime of 2021, March maybe?
A. Oh, it would have been in the wintertime. Yeah. It was before the Complaint.
Q. But it was -- am I correct that it was after the November time period of 2021 when the commission approved the map, or approved the concept of the map?
A. Probably. I would say yes, yeah.
Q. Okay. Who are all of your attorneys in this case?
A. You know, be honest, I just know Drew has been my primary contact. And I met one of the -- well, didn't meet, but over the phone spoke with my attorney, and I apologize for not knowing his name offhand, but my glasses are a little fuzzy. I should have gone with my old-school glasses. So I can't read what's in front of me right now.
Q. Okay.
A. I should just take them off. So I apologize.
Q. So do you know how many attorneys you have in

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this case?
A. No.
Q. At some point have there been attorneys other than Mr. Stokesbary who represent you?
A. Yes. I spoke with my attorney yesterday.
Q. Okay. And how did that come to be?
A. I believe it was through Drew. So my primary attorney had given me notice, I believe, that another attorney would be talking to me specifically.
Q. But you don't -- you can't recall their names?
A. I've got it on my phone, but I'm using that right now for --
Q. Sure. And I don't want to -- it isn't a trick question. Is it the law firm of Holtzman Vogel?
A. It -- you know, I don't want to say yes or no because I just got his name basically yesterday. I believe it was yesterday or day before.
Q. Okay.
A. I'm just not -- I'm not sure of his name, and I apologize because I'm sure he's on here, so my sincere apologies. I can't use my cell phone to -- to take a look at his name, and my glasses, they're brand-new, and I just realized right now that I can't use them to read.
Q. They're useless to you.
A. Yeah. They're useless to me, so --

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Q. Does Dallin Holt ring a bell?
A. Yes.
Q. Okay. Is that one of the -- is that who you spoke to?
A. I believe so, yes.
Q. And do you understand that he has associates who are -- that work with him as well? Is that right?
A. That is correct.
Q. And they became your attorneys, as you understand it, yesterday; is that right?
A. That, and Drew remains my attorney, yes.
Q. Now, you talked a little bit with Mr. Hughes about this, but do you understand that your attorneys also represent three individuals who have intervened as defendants in the Soto Palmer lawsuit?
A. Yes. That was news to me that -- that -- about -- about that, that -- at this point. Yes, this was just brought up. Yes.
Q. And when you say that was news to you, you mean during Mr. Hughes' questions of you, that's when you first learned that your attorneys also represented intervenor defendants in the Soto Palmer lawsuit?
A. Yes. That's also news to me.
Q. Are you aware of the relief that -- or the outcome that the intervenor defendants, who your counsel

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represent in the Soto Palmer lawsuit, are you aware of the -- what they are asking the Court to do in the litigation?
A. I wasn't aware until it was brought up to me today that if the case were to move forward, that the intervening defendants -- or intervening Jose, Alex, and Mr. Campos would be the ones moving forward on the case and I would be withdrawn from the case. Is that correct?
Q. Well, that was the representation that was made by your counsel to the Court, so that is correct.
How does that make you feel?
A. I got to be honest. I made it clear that, if I started this, I was going to finish to the end, and I am not pleased.
Q. And you're not pleased to be learning that for the first time in this deposition; is that right?
A. Absolutely correct.
Q. Are you aware that the intervenor defendants, in particular Mr. Ybarra and Mr. Trevino, have testified in depositions in this litigation that it's their desire that the map remain unchanged?
A. I was unaware of that.
Q. The first time you're learning that is when I just told you that in my question?

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A. Yes.
Q. And are you aware -- or strike that.
Now, I understand, from your conversation with Mr. Hughes, that -- am I right that you -- you want the map to be changed?
A. That is correct, what I stated, yes.
Q. And so this is the first time you're learning that your attorneys are both representing intervenors in the Soto Palmer case, asking that the map not be changed, and also representing you at the same time, where you want the map to be changed?
A. Yes.
Q. Do you see a problem with that?
A. Yes, I do.
Q. And what is that?
A. There are conflicting reasons why the Complaint was filed on initially why I filed it and to know that, if this case were to be moved forward, the intervening witnesses, or defendants, however you want to -- plaintiffs, would go ahead and see the Complaint in a different light, opposite to what was initially filed, and that I would not see this to fruition, to completion of adjudication.
Q. So the problem is both that -- that your counsel was saying they would dismiss your lawsuit

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without your authorization --
A. Uh-huh.
Q. -- but also it's a problem that they have clients whose interests are opposite to yours; is that correct?
A. That's correct.
Q. And I assume it was your expectation that your counsel would be representing your point of view exclusively; correct?
A. That is correct, and under our legal representation agreement.
Q. And so your -- your written agreement with your counsel provides that they will represent your interests and your desires, and not be in conflict with that?
A. At free cost through the duration of this Complaint.
Q. And you agree with the statement I made as well?
MR. STOKESBARY: Hey, I'm sorry, Mark. I couldn't find my mute button in time, but I'm going to object to the extent you are asking about privileged communications between me and Mr. Garcia. And, Ben, I'm going to ask you -- no, it's okay. I'm going to ask you not to answer questions about our engagement agreement.
THE WITNESS: Hello?

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MR. GABER: Yeah. I'm sorry. I'm just taking a moment to think.
THE WITNESS: I didn't know if something went wrong again, so I apologize.
MR. GABER: No, your side's working good.
THE WITNESS: Am I able to get a copy of this deposition very soon?
MR. GABER: The one that you're taking right now?
THE WITNESS: Yes.
MR. GABER: Yeah, you'll get a copy, and your counsel will be able to order a rush copy too, if you'd like, which would be quicker than the normal course.
THE WITNESS: Okay.
BY MR. GABER:
Q. So have you talked to Mr. Ybarra at all about the -- what he would like to have happen to the map or anything about the redistricting plan?
A. No.
Q. And what about Mr. Trevino?
A. No.
Q. And Ismael Campos?
A. No.
Q. And just so I understand, did you speak to

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anyone at the Holtzman Vogel law firm, other than Dallin Holt?
A. Not that I'm aware of. I don't think so.
Q. Did you speak with Mr. Jason Torchinsky?
A. I don't think so. I mean, like I said, I -- the communication was -- you know, there's -- no, not that I'm aware of.
Q. And what about Phil Gordon?
A. No.
Q. And, Mr. Garcia, do you have a copy of your engagement letter there with you for today's deposition?
A. The subpoena?
Q. No. Your -- your retainer agreement with your lawyer.
A. Oh, do I have a copy of my -- my retainer agreement? Yes, I do.
Q. And that's -- that's there with you for today's deposition?
A. The agreement for legal representation? Yes.
Q. Yes.
A. Yes.
MR. STOKESBARY: Yeah, again, I'm going to object to the extent this calls for privileged attorney-client communication and, Mr. Garcia, ask you not to discuss our engagement agreement.

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BY MR. GABER:
Q. And my question, Mr. Garcia, is just that it's there with you. You brought it with you to the deposition; is that right?
MR. STOKESBARY: You can answer that question, Ben.
A. Oh, yes.
BY MR. GABER:
Q. And have you reviewed that during the course of the deposition?
A. No. Because my glasses -- and I apologize. I just got these from the VA, so I assume they were -- there wasn't a problem with them, but --
Q. My uncle has had the same problem with his VA glasses, so I understand.
A. I'm having a little bit of problem. Everything's a little fuzzy on the reading.
Q. Mr. Garcia, are you aware that Mr. Stokesbary serves in the legislature?
A. That, I didn't know, no.
Q. You did not know that?
A. No, I did not know that.
Q. So I gather you're not aware that he voted in favor of the plan that you are challenging?
A. No, I was unaware of that.

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Q. How does that make you feel?
MR. STOKESBARY: Sorry. Once again, slow on the mute button, but objection that it misstates the evidence.
BY MR. GABER:
Q. And you can go ahead and answer.
A. Not very good.
Q. And you cut out a little bit. Not -- did you say not very good?
A. Not very good.
Q. Why is that?
A. The Complaint that was filed, I would assume that my attorney would be in line of -- of my support.
Q. And to make it clear, this is the first time you're learning that there was a vote taken in the legislature, that Mr. Stokesbary is a legislator, and that he voted in favor of the plan; is that right?
A. That's correct. This is the first time I've heard of it.
Q. Given some of the things you've learned today for the first time regarding your counsel and their representation in the other parallel lawsuit, do you have any plans for how you want to proceed in this case?
A. I'll have to refer to my legal counsel and talk to him after.

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Q. But as you sit here today, I gather you're pretty concerned about the situation?
A. Yes.
Q. Okay. I want to shift gears a little bit and talk a little bit about your experience running as a candidate in the area and your campaign and your familiarity with the area, if that's okay with you.
So you ran for congress in 2022; is that right?
A. That is correct.
Q. And was that your first time running for office?
A. Yes.
Q. And how did you decide to get involved in that race?
A. I had helped a candidate, a fellow Republican, in 2016, and we got to the primary, and I felt that representation was -- was not there in -- in all manners.
And I wanted to reach out to as many people as possible, and to put my -- the reason why I felt I was the best candidate to go ahead and represent the 4th Congressional District.
So I got an idea from, like I said, another candidate who was involved in the race quite a bit, and seeing how the process went, so I could learn, if I were

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going to run, how to go about it and not just put my two feet in there and pray for the best, you know.
Q. And this was a campaign against the incumbent Republican, is it Dan Newhouse?
A. That is correct.
Q. And how many Republican candidates were running in that race?
A. There were a number of Republican candidates, about five, including myself.
Q. And were -- you're Latino; is that right?
A. That is correct.
Q. And were the --
A. Well, I'm of Seminole-Negro descent and Latino.
Q. Were the other Republican candidates in that primary white?
A. Yes, that is true.
Q. All of them?
A. Yes.
Q. Now, I spent some time reviewing some of your campaign materials and some of the videos and whatnot.
A. I hope you didn't find it offensive. Sorry. I just had to put that in there, so I apologize.
Q. No, I -- I did not, and I enjoyed it.
One of the videos was -- you conducted it in Spanish, and said something along the lines of that you

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were the only candidate who was running for all the people, including for the Latino people.

Do you recall that?

A. Yes.

Q. What did you mean by that?

A. We are a fairly large minority district. The state -- we're the second largest state population. Latinos is second largest state population. We are 40 -- approximately 40 percent of the -- of the population in the 4th Congressional District.

None of our representatives that have been house reps truly understand the need to reach out to all the people, understand -- you know, for example, when do you ever see any of the house reps ever go to a taqueria, you know? Mingle within the -- their -- their people that they're supposed to represent, you know?

For me, there is a disconnection. Although things have gotten much better. I mean, I was Ebony Senate rep in college. I was part of LULAC, part of the Republican National Hispanic Assembly.

My desire is that all people vote, whatever that may be, but that they register to vote and that they vote. But our -- it's my personal belief that our representatives really don't understand the overall -- the people in their district, and they don't reach out

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to them. And that's missing. And so --

MR. GABER: He may have frozen again. Last time he worked it out and got himself back on, so maybe we take a -- go off the record for a moment.

(Recess from 10:52 a.m. to 11:06 a.m.)

MR. GABER: So I guess back on the record. Cindy, are you able to read back -- I know we cut out as Mr. Garcia was answering the last question. Cindy, are you able to read back my question and his answer, as far as he got?

THE COURT REPORTER: "Question: What did you mean by that?

"Answer: We are a fairly large minority district. The state -- we're the second largest state population, Latinos is second largest state population. We are 40 -- approximately 40 percent of the -- of the population in the 4th Congressional District.

"None of our representatives that have been house reps truly understand the need to reach out to all the people, understand -- you know, for example, when do you ever see any of the house reps ever go to a taqueria, you know? Mingle within the -- their -- their people that they're supposed to represent, you know?

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E X A M I N A T I O N (Continuing)

BY MR. GABER:

Q. So we're waiting at the edge of our seats, Mr. Garcia, to find out what followed "and so."

A. And so that is one of the reasons why I decided to run for U.S. Congress. I've got the experience. I've done over a thousand loans for folks to be homeowners in this state, with the federal government, the GRH program. I've done AmeriCorps. I've worked in the school districts. I'm 51, so I do have a prior work background.

And I feel that there is a disconnect, but I believe that that can be changed, and that's with a sincere person who -- who has made a difference in -- whether it be for my country or whether it be in my community. I have showed lifelong of making a difference.

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Q. And is it your -- from living and from working and from running as a candidate, I gather it was your impression that there -- there's a lack of attentiveness to the Latino community from our politicians?

MR. STOKESBARY: Objection to the extent that calls for a legal conclusion.

A. I think, in all perspective of our -- most of our representation, they no longer represent the average person or that of the lower class.

BY MR. GABER:

Q. And so is it your experience that, in particular, Latino voters in South Central Washington oftentimes have a lower socioeconomic status than their white counterparts?

MR. STOKESBARY: Objection. Calls for speculation.

A. I can't answer that in that sense to know -- to have the experience that I could say that, you know, a large -- the -- the -- you know, economically they're in lower class zones; in other words, their income is not as high for all people.

You know, you can take a look at Toppenish School District. You could take a look at some of the Yakima school districts. There's much poverty across the board.

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

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

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

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

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Me being the only Latino representative, it would have favored. Dan Newhouse would no longer be your congressional victor. It probably would have been Culp. But they greatly affected this election, the outcome, and suppressed the Latino vote.

Q. And was it your sense that that was sort of a coordinated effort in the State Republican Party, to suppress the Latino vote in the area?

A. What I will say is this: They say it was a mistake. There's no mistakes in a congressional race like this. We have a third party out of Texas that told them there was no misunderstanding to -- and -- misunderstanding about this.

As a matter of fact, you know, you probably didn't see this, since you did your research on me. Did you see the fact that I saved somebody's life in a --

Q. I did --

A. -- mass shooting? You know?

Q. I did see that, and that was extraordinarily impressive.

A. You know, I thank God that I was there at the right place, right time. My -- my thing is like it was. I didn't change. I believe in seeing all people's rights. I believe strongly in the civil rights.

That's why I was Ebony Senate rep in college.

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And I feel -- and it doesn't matter which party it is. I will do the right thing. For our voice not to be heard and what I feel is suppression, we can disagree upon this, and I welcome a lawsuit, you know.

We did not get fair representation in this 4th Congressional District race. And it's not on the candidate. This was done -- they can say, well, Ben, you know you need to pay for that.

At no point in time, especially since I was supported by a third party who is well connected to the RNC, was that ever brought up. Why didn't you ask me, we can't do this, instead of having my volunteers phone bank, and instead of having my voice message out, it was for the Washington State Republican Party. Not acceptable.

Q. And is it the case that you didn't find out about this until after this had -- the decision had been made not to use your message?

A. It was before. It was before the decision. I found out during the campaign process, but, you know, those are -- are strong challenges when you've already committed so many hours and so much in volunteers to have to overcome. You can't take that time back.

Q. Right.

A. The impact has already been done.

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Q. You said the RNC member told you he was quitting because of this; is that right?

A. That's my understanding.

Q. And that was because of the suppression of the Latino vote in your race?

A. Because of what happened in my race, yes, that's correct.

Q. Has anything been done to rectify the situation with the State Republican Party?

A. What I -- what I do want to do is go ahead, after I'm completely settled in in my home and -- and take care of other personal matters, I will go ahead and then write a letter to the RNC, write a letter to the state chairman, and write a letter to the 4th District chairmen, chairpersons, and let them know about what has occurred, what has happened.

This isn't just my word. You know, to be supported, one in five in the nation, Latinos, that's a privilege, and to know that the phone bank system does work because they have a history of getting winning candidates.

So I will be putting that out there, and I will leave it in the hands of the Republican Party on what they want to do, but I will certainly entertain the fact that I may take legal aspects on this in some manner

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because what occurred is not acceptable. And I am a fighter, you know. And if it's wrong, I will fight it.

Q. Did you hear from Latino voters who were upset that this had happened in your race?

A. A lot of people were upset. I gave a speech about it in Ellensburg -- not Ellensburg. I gave a speech about it -- oh, gosh, what district? I gave a speech about it, and some of the candidates had questions, you know, like what are you talking about exactly here? You know.

And this, like I said, was later on toward -- you know, toward the end, where, you know, you had to make it clear how the facts have occurred. And the people were upset, you know.

And what was wonderful is, you know, to see some of the candidates say, what exactly are we talking about here, whether it was Culp's people or whether it was Sessler's people, you know, or it was people in general that were there asking questions, you know, "Are you saying this happened?"

I go, "Absolutely, and this is why."

And it's just not my word. You don't give us access to your phone bank system -- because they, like the Democrat Party can go ahead and say, hey, let me see -- look at your -- look at your phone system, you

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know? Let me see what you got out there, you know.
Obviously I had access to it. Obviously we created within our district the phone bank system and those phone numbers. And it was to go ahead and give knowledge that I am running.
And the goal was to get minimal to 50,000 phone calls, you know, which in a midyear election can turn toward -- favorable toward you. So...
Q. Did you, like, communicate with people about this issue? Did you send text messages or email with people about your concerns about the --
A. I -- I did send emails probably to some of the newspapers, you know. And really they didn't have, you know -- I shouldn't say I personally did, but some of -- of the folks that my staff had, you know.
Because we're concerned. You know, we're -- we're concerned, one, how our volunteers were used. We're concerned about the communications and lack of, to not be given notice that our voicemail was not done, and this is through the Washington State Republican Party. When did this change occur? Why did it occur?
Couldn't get an answer really clearly, as -- if you saw the newspaper, it was quite ambiguous, you know. But the bottom line is, you got your hand caught in the cookie jar. You didn't expect me to ever know about it,

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but I found out.
And that was because someone was being honest and decided to leave their RNC, and it just changed his life, you know, in all honesty. He's not returned back to politics.
Q. Who is the RNC member who left?
A. Manice (phonetic) Perry. I would spell it correctly for you, but I'd have to get off-line.
Q. No, you're -- we don't expect you to try to use your phone in your current circumstance.
A. Yeah, I'm in my car right now. I didn't think this would ever be happening. Wow.
Q. We definitely appreciate it.
Have you spoken or are you aware of any other Republican Latino candidates who have faced similar -- or, you know, the same type of problem with the State Republican Party?
A. Well, I will say I was told about a situation in King County, and that was through Sea Chan, who happened to run for the 4th Congressional District, I think it's the 4th, in King County.
And so he has a -- he has a good knowledge base of -- of what occurred to a candidate who was Asian, you know. So, you know, we had quite a long discussion on things.

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We want to fix things. We're both military. We want to fix things. We believe in this country. We -- we, you know, put our lives out there for it. I wear the scars on my body for it, you know.
To give up a federal position because things are broken, you don't take lightly a career and throw it away. You know, I'm not here to be liked. I'm here to fight for the right thing, and that's why I'm here.
Q. Now, Mr. Hughes asked you a bit about Senator Torres, and I gathered from your answer and sort of your expression that she might not -- you might not align politically. Am I right about that?
A. Right. But it's not -- it's not necessarily, you know -- irregardless of who the candidate is, I believe the district was illegally designated, done, and at the time my lawyer did too.
And so, you know, I base it on my Complaint. It don't matter who the representative is, irregardless. I want this to go all the way through to determine whether or not -- if I'm wrong, then I am. If I'm right, then I am. But I want the right thing to happen.
Q. So my question is less about the -- like setting aside the district, and then just talk about Senator Torres in terms of, you know, her political beliefs and yours.

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Is that -- is she someone who you would choose to be your representative in the state legislature?
A. You know, I believe I voted for her. I think I did. I think she is a Republican. I believe I voted for her. I spoke to her just a bit, not -- I mean, I shook her hand. That was about it.
We were busy at the event, so -- yeah, I -- I fine line item went through all the candidates, you know, and, you know, I -- I try to vote for who I think is the best option, you know.
I am Republican, but there are reasons for that. But I have a history of voting both ways. You know, I am conservative, but I want to see the people that -- that are conservative and that I think will do the best job. And if they did a good job on both ends, I wouldn't be here today.
Q. Do you know how long Senator Torres has identified as a Republican?
A. You know, I didn't even know who she was. Probably as long as she had that meeting with Jim Honeyford.
Q. Are you aware of views in the community that she might not -- her ideology may not, in fact, be Republican, but that she was run as such?
A. You know, I didn't -- to be honest, I didn't

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stay focused on her, for a number of reasons, but on other people, because I -- I was very busy running my race, trying to make meetings, and running in -- up and down what is our largest congressional district in the state.

Q. And am I right that --

A. Yakima County's pretty large.

Q. Am I right that Senator Torres was the only Republican candidate available for you to vote for, for that race?

A. She was. Yeah, she was the only one. Now, that's after Senator Honeyford -- State Senator Honeyford had decided that he wasn't going to run again, after the fact. But that's politics for you.

Q. Now, you mentioned that you had sent some emails, or you -- you or your staff had sent some emails to some newspapers about the controversy with the State Republican Party.

Did you text people about that, as well?

A. Did I what?

Q. Did you send text messages on your phone to discuss that issue with friends, colleagues, anyone?

A. I did with the Latino StrikeForce because they were the ones that endorsed me. The moment I found out was -- like I said, I was shocked that this would occur,

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you know. We're talking a U.S. congressional race.

We're not talking -- even if it's a misunderstanding, whatever race it may be, the volunteers that put their time in, the support you got, you know, it affects things, you know. So yeah.

Q. Now, you received two subpoenas; is that right?

A. I'm sorry.

Q. So you're here talking to us today, or talking to me, at least, because you received a subpoena to testify; is that right?

A. Yes. There's another one, I think on Monday or Tuesday, via Zoom.

Q. So that -- okay. So let me just -- how -- did you -- so you received two subpoenas; right? One was for your deposition testimony and one was for documents.

Do you understand that?

A. Right. Right. And -- and the documents, I need time to get that because I still ain't moved in my house. So I have a lot of things packed away in storages. And, you know, I don't even have a printer right now. I need to go buy ink for it, but after -- you know, what I'm saying is -- because -- we barely made it in time to move into our home.

Q. Sure. Sure. And then --

A. We got construction going on still. So it's --

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you know, we're glad to be home. We've moved five times. A little exhausted, you know, putting my family through, you know, with what occurred with the house fire, and still having to meet the requirements to get it all fixed. It's almost there.

And, you know, the documents, as far as basically talking to a couple of reporters, you know, there was one news article that I'm aware of that they put it out there, and basically they were like, "Garcia was angry," you know.

Well, not so much angry in the sense that you're displeased with the fact that this can occur and you want fair play. And I believe -- I don't cheat, you know. That's not who I am.

And I believe in the American dream, and I believe that we -- you know, that the framers of this country created the greatest -- second greatest document in the world. The first is the holy scriptures. Second is our constitution.

Q. And so it sounds to me, at least with respect to the -- to your -- the 4th District Republican primary and the -- your experience with the effort to suppress the Latino vote there, that that's an example of an unequal electoral opportunity for Latino voters in the area; is that right?

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MR. STOKESBARY: Objection --

A. Yes.

MR. STOKESBARY: -- as to form.

A. Sorry.

BY MR. GABER:

Q. Go ahead, Mr. Garcia.

A. I agree. I agree. I think the head of Washington State Republican Party has its challenges.

Q. And that -- those challenges are negatively affecting the Latino voters where you live; is that right?

A. I agree.

Q. Now, I understand that -- when did you -- when did you see the -- the copy of the subpoenas for the first time?

A. I think it was Tuesday, last Tuesday, I believe. It was served around 7:00 in the evening, I think.

Q. So you saw those when the process server came to the house; is that right?

A. Yes. The person serving me the documents, yeah.

Q. So you didn't get those ahead of time from your counsel?

A. No.

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Q. Well, I can tell you your counsel's had them for two weeks, and I understand the need for more time, particularly given the circumstance with the fire at your house.

I would, you know, request that we -- and would you be agreeable to maybe sit with us again if we have any questions based on what's in those documents?

A. I would. There were some text messages that were sent, and, you know, I made -- we made some phone calls to -- to the fact, you know, and it was basically one reporter that basically, you know -- and it was just a phone call.

So -- they were trying to understand how this was suppressing the vote, you know, or they wanted a complete, you know -- like, who's the one that did it? Well, you know -- evidence on that.

And I'm like, wait a minute. We've got a video on the training. We've got an email that -- from the Latino StrikeForce. We had access to their phone banking system.

We created our own district in the sense of all registered Latino voters, Republican voters. 10,000 phone calls were made and the voicemail was switched. You don't have access to all that, and not have their permission for it, and there's no misunderstanding of

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why we're doing it.

So, you know, it's just not acceptable. If they wanted to say no because maybe they have a candidate dog in the fight, that they would hopefully let you know, then just say no.

But I know -- I have a hard time trusting politicians, and I have a hard time trusting lawyers, you know. Just being honest. And -- so, you know, I guess I'm the little guy fighting for the big dream, but I -- I believe that I will be where I need to be in a little while because I'm a big fighter.

Q. Well, I have no doubt about that. With respect to the -- sorry. Back to the text messages. It sounds like there's some texts that you exchanged with the Latino Task Force people; is that --

A. StrikeForce.

Q. StrikeForce?

A. Latino StrikeForce out of Texas.

Q. Okay.

A. Yes, there is, you know.

Q. Okay.

A. Yes, there is.

Q. And you still have all of those?

A. I should have the texts because, like I said, I was on the phone the moment I found out, and Manice had

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verbally given me the -- why he quit, but -- in his text message, it was a little different, that they removed the Spanish version, you know, on the text message.

So, you know, we both were pretty disheartened in -- in what we want to see in leadership. How could you not let the Latino StrikeForce know? How can you not let the RNC member know? How can you not let my staff or myself know? That's a big, big mistake. Out of respect of me running for congress, how can you not let any of these organizations know?

Q. And so the Spanish language part was removed as well?

A. Yes.

Q. And just to clarify, the -- you know, I know you're -- the Congressional District 4 is larger than --

A. It's the largest.

Q. Yeah.

A. It's the largest in the state.

Q. But it covers all of Yakima County; is that right?

A. Yes.

Q. And then it also includes Benton County and Grant County; is that right?

A. Yeah. All the way from the Canadian border, from Okanogan, basically almost central, almost Central

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Washington, down to the Columbia. Klickitat, Benton, Franklin, Adams, Grant, Okanogan, Yakima. At one point it was parts of Walla Walla, a little tiny part, you know.

Q. And so Pasco is in the district as well; right?

A. Absolutely.

Q. And Othello and Adams County?

A. Yes.

Q. And then all of -- all of Yakima. Mattawa's in the district?

A. Yes.

Q. So there's quite a bit of overlap between District 15 in the legislative map and District 4 for the congressional plan?

A. Yeah.

Q. Now, I understand that you need time to look for the documents. Have you looked through them at all in response to the subpoena --

A. No.

Q. -- for today?

A. No, no.

Q. Okay.

A. And to be honest, I wasn't sure what -- what you would want from me in documents, or how the question -- you know, the -- seriously? She just banged

my car. Sorry. Anyways, I'm sorry. What was the question again?

Q. I think I had asked whether you had looked at -- looked for the documents before today.

A. No. I mean, well, I didn't simply because I wasn't sure what was going to be asked of me, you know, and having so much boxed up and five moves, I would have to find out where to look, you know.

Q. But you have your phone and, you know, that --

A. Yes.

Q. -- would have the text messages and whatnot, and your email you have access to now; right? We could start with the electronic communications --

A. Yeah, my -- right. But my email for the congressional race is getting to the point to where I need to get ready to pay for another year, so I don't know if I'm going to, you know, at this point because it's just an email. But still it's a little bit of money out of the pocket, you know.

Q. So it probably makes sense to start there and collect those so that you get them before you have to pay to host that again, so that --

A. Right. And I hope to get to them by next week, you know. Like I said, I don't got my computer up yet. We still have some work to be done in the house. But I

will be getting -- I can get to them.

Q. Okay.

A. You know, and I think basically everything was just done by phone conversation, other than a few texts, which had to do with the Latino StrikeForce and had to do with Per- -- Manice in regards to that.

Q. So I want to -- I know this is difficult for you because you're in your car on the phone, but I'm going to share my screen and see if you can see it. Just one moment.

So before I do that, so the complaint you had about -- setting aside your thought that it's a racial gerrymander, District 15 --

A. Okay.

Q. -- your geographic complaint, as I understand it, is it's stretching, you know, from Yakima County further over toward Franklin County? Is that --

A. Yes. And again, I'm seeing a little fuzzy on the reading thing, you know, because the glasses I thought that were supposed to be my prescription aren't quite -- they're -- they're not -- I'm going to have to send them back.

Q. So I've pulled up a map on the screen. Can you see that?

A. Yeah, I can see the red and -- and the lines,

but I -- I -- I'm having trouble distinguishing the lines a little bit. I apologize.

Q. No, no worries. So I can kind of explain it to you a little bit. You see the red is in the southern half of Yakima County? Can you see that?

A. Umm --

Q. Maybe -- maybe even pull the phone a little bit closer to you.

A. Well, I'm -- yeah, I mean, I'm sorry. It's -- okay. Go ahead. I'm sorry. I'm just...

Q. So do you see where the red area is situated on the map, in -- primarily in Yakima County?

A. Yeah. I see. I see the red.

Q. Now, if the district looked something like this, would this resolve your geographic concerns?

MR. STOKESBARY: Objection as to form.

A. I -- you know, I got to apologize. I really can't answer that. I'm having -- I'm just having a lot of issues reading. I mean, I can't even read the -- the subpoena and stuff, so I -- I really apologize for that. I didn't think I -- these glasses -- set of glasses I brought would -- well, I thought they were meant for me. Apparently...

BY MR. GABER:

Q. Okay. So you can't --

A. I'm sorry.

Q. -- see where the red is on the map?

A. No, I -- I see the red, but I'm having trouble with the lines distinguishing. They're fuzzy.

Q. Okay.

A. I mean, I'm seeing everything fuzzy, and so I apologize.

Q. Okay. Well, we don't need to keep testing your eyes.

A. Yeah. Sorry.

Q. Did you -- now, earlier we talked about how this is the first time, you know, when I told you, and Mr. Hughes mentioned it as well, about the intervenors and their opposite relief that they want.

I gather you haven't signed any sort of conflict waiver?

A. No.

Q. And so no -- no conflict waiver --

MR. STOKESBARY: Hold on. Hold on, Mark. I'm going to object to this question to the extent it calls for privileged attorney-client communications, and, Ben, ask you not to discuss any conversations between us.

THE WITNESS: Sorry.

MR. HUGHES: I don't think the question

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

* * * * *

Deposition Upon Oral Examination of
Adam Hall
December 19, 2022

* * * * *

REPORTED BY:
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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, Defendants, and JOSE TREVINO, ISMAEL G. CAMPOS, and State Representative ALEX YBARRA, Intervenor-Defendants. No. 3:22-cv-05035-RSL

DEPOSITION UPON ORAL EXAMINATION OF
ADAM HALL

Monday, December 19, 2022
8:59 a.m. to 4:32 p.m.

REPORTED BY: LAKESIDE REPORTING
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* * * * *

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Q Did you have any other conversations with him?
MS. GOLDMAN: Can we just be clear on the year?
MR. HUGHES: What's that?
MS. GOLDMAN: Can we be clear on the year?
Q (By Mr. Hughes) Thanksgiving 2021; correct?
A Yes.
Q Do you recall any other conversations with anyone at UCLA Voting Rights Project about potential litigation or actual litigation?
A At the time I was working with Sonni Waknin on a State Voting Rights Act proposal. It might have come up in passing, but it wasn't something we spent a lot of time talking about.
Q Anyone else?
A No.
Q Okay. And I've been focused on the UCLA Voting Rights Project. I don't want to leave anyone else out.
Between the deadline, the November 15th deadline and when you first received a subpoena in this case, have you had communications with anyone else involved in this litigation -- and I can give you names if you need them -- about this litigation?
MS. GOLDMAN: I think it would be helpful for you to give him names since there is quite a long list

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of lawyers. So if you want him to answer about all of those lawyers, please provide them -- Please provide him the names.
A Can you clarify the timeline? It's between the deadline on November 15th, 2021 and when I received the subpoena?
Q (By Mr. Hughes) The first subpoena you received, yes.
A Okay.
Q So have you communicated with anyone from Campaign Legal Center about this litigation?
A No.
Q Have you communicated with anyone from Mexican American Legal Defense and Educational Fund about this litigation?
A No.
Q Okay. You were asked -- I'm switching gears totally now. You were asked about Wapato and Toppenish and why they weren't included in LD 15. Do you recall that?
A This morning's conversation?
Q I believe it was this morning. It could have been early afternoon.
A Yes.
Q Are you aware that both Wapato and Toppenish are part of the Yakama Reservation?

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A Yes.
Q And the Reservation is in the 14th District; correct?
A Yes.
Q Does that in your mind help explain why those particular cities are in the 14th with the rest of the Yakama Reservation?
A No.
Q Why not?
A Because you could draw a district that was -- that would allow Latinos to elect the candidate of their choice and include the entirety of the Yakama Reservation in the same LD.
Q Okay. But on the narrow question of -- Well, strike that.
You could also draw a district that complied with the VRA in your mind that did not include the Yakama Reservation; is that right?
MS. GOLDMAN: Objection to the degree it calls for a legal conclusion.
A It is my understanding that you could draw a VRA-compliant district that includes parts of the Reservation. I do not know whether you could draw a VRA district that was exclusive of the entire Reservation.
Q (By Mr. Hughes) Let's pull up Exhibit 5 again, if

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you don't mind. You know what, scratch that.
You said that you discussed VRA issues with Senators Pedersen and Billig; correct?
A Yes.
Q Do you know whether they shared your view about whether LD 15 complied with the VRA?
MS. GOLDMAN: Objection to the degree it calls for speculation, and lack of foundation, and to the degree it calls for a legal conclusion.
MR. HUGHES: And you know what, it's also compound, so I'm going to ask it differently.
Q (By Mr. Hughes) Do you know if Senator Pedersen shared your view about whether LD 15 complies with the VRA?
MS. GOLDMAN: Same objections.
A Our caucus was supportive of a statement put out by Senator Billig in the immediate aftermath that he had concerns that the legislative map did not comply with the federal Voting Rights Act. That comported with my understanding of their position in private.
Q (By Mr. Hughes) Their position being Senator Pedersen's position?
A Reflecting both of them, yes.
Q Okay. So I want to be sure I understand this. In your view as far as you understood it, Senator Pedersen

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agreed with you that LD 15 did not comply with the Voting Rights Act?
MS. GOLDMAN: Objection, misstates the testimony.
A I believe that he reflected the same thing that Senator Billig reflected publicly, which is that they had significant concerns that the map was not compliant with the federal Voting Rights Act.
Q (By Mr. Hughes) And I think that makes my next question a foregone conclusion, but is it your understanding that Senator Billig shared your view that LD 15 did not comply with the Voting Rights Act?
MS. GOLDMAN: Objection, misstates the testimony.
A Again, he publicly stated that he had significant concerns that the map as adopted did not comply with the federal Voting Rights Act.
Q (By Mr. Hughes) Okay. Do you know whether Senators Pedersen and Billig voted to approve the maps?
A I want to be careful here because I think there's been a lot of confusion around the resolution that passed in the Legislature.
Can you ask your question again?
MR. HUGHES: Jeanne, do you mind reading the question back?

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THE REPORTER: Sure. "Do you know whether Senators" -- Excuse me. "Do you know whether Senators Pedersen and Billig voted to approve the maps?"
A They did not believe they were voting to approve the maps. We had several conversations internally during that legislative session about what their vote constituted at the time.
Q (By Mr. Hughes) And when you say their vote, do you mean their vote on House Concurrent Resolution 44.07?
A Yes.
Q Amending -- and I'll just read the title -- "Amending the Redistricting Plan for State Legislative and Congressional Districts;" correct?
A Yes.
Q And as far as you understand it, HCR 44.07 is what made the Legislative Districts that the Commission adopted as amended the law of the state of Washington; correct?
A I would not actually characterize it that way.
Q How would you characterize it?
A The Legislature is granted the opportunity to amend the legislative plan so long as no district changes more than 2 percent. The statute says that the maps shall be finalized after that opportunity, but it can be finalized if they took no vote at all.
So we discussed at length whether or not it made

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sense to approve a resolution amending the map because of the exact nature of this concern that we would somehow -- that the members of the caucus would somehow be seen as approving the map by virtue of their vote.
Q And the statute you just referred to, RCW 44.05 -- correct?
A Yes.
Q -- also empowers the Legislature to reconstitute the Redistricting Commission; correct?
A Upon a two-thirds vote of both chambers, yes.
Q Okay. And that was not the decision that the Legislature made; correct?
A Yes.
Q Okay. Instead Senators Pedersen and Billig voted to approve an amended version of the map; correct?
MR. MULJI: Objection to form.
MS. GOLDMAN: Objection, asked and answered, and argumentative.
A Again, they believed at the time -- and I believe that a proper reading of the law is -- that they did not approve the map. They amended the map. That is the only constitutional role granted to them in redistricting.
Q (By Mr. Hughes) Do you follow Senate elections in Washington state pretty closely?
A Yes.

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Q If I asked you to -- and I'm not asking you to. If I asked you to could you name every sitting Washington State Senator?
A I'd probably miss a couple.
Q Well, good thing I won't ask you to because I wouldn't want that to be public record.
Do you know who Nikki Torres is?
A Yes.
Q Who is Nikki Torres?
A Nikki Torres is the Senator-elect from the 15th Legislative District.
Q Do you know who Lindsey Keesling is?
A No.
Q You follow Senate elections pretty closely in the state of Washington; correct?
MS. GOLDMAN: Objection, asked and answered.
A Yes.
Q (By Mr. Hughes) Lindsey Keesling was not someone who rated -- Sorry. That was a bad question. I'll start over again.
Notwithstanding your clearly vast knowledge of Senate elections, you didn't know the name of the person who was running against Nikki Torres in LD 15?
MS. GOLDMAN: Objection, asked and

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answered, and argumentative.
A This was a write-in candidate; right?
Q (By Mr. Hughes) I'm asking you.
A I don't -- I don't remember.
MS. GOLDMAN: If you know.
Q (By Mr. Hughes) So your understanding is that Lindsey Keesling is a write-in candidate?
A I was aware that there was a write-in candidate in the 15th Legislative District.
Q Is it safe to say that if Lindsey Keesling -- and I mean this with all due respect to Ms. Keesling -- were a serious candidate, you would know who she was?
MS. GOLDMAN: Objection, calls for speculation.
A I'm going to ask you to restate the question.
Q (By Mr. Hughes) Is it fair to say -- and I mean this with all due respect to Ms. Keesling -- that if she were a serious candidate, if she were seriously contending for LD 15, you would know who she was?
MS. GOLDMAN: Same objection.
A Yes.
Q (By Mr. Hughes) Do you believe that Lindsey Keesling was a serious contender for LD 15?
MS. GOLDMAN: Objection, calls for speculation, lack of foundation.

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A I don't know anything about the woman who ran as a write-in candidate. I believe that any Democrat running in that district was unlikely to succeed in the election.
Q (By Mr. Hughes) Do you know whether Ms. Keesling raised any money?
A I do not.
Q Do you know whether she had Twitter presence?
MS. GOLDMAN: Had what?
MR. HUGHES: Twitter presence.
A I do not.
Q (By Mr. Hughes) If someone were a serious candidate, do you expect they would have raised a significant sum of money?
A Can you ask that question differently?
Q It's all right.
MR. HUGHES: I'm going to actually -- That's all I have for you.
MS. GOLDMAN: Let's take a break.
MR. BOWEN: Okay. Five minutes?
MS. GOLDMAN: Thank you.
(Break 4:19 p.m. to 4:24 p.m.)
(Discussion off the record.)
MR. BOWEN: I'm going to try to keep this very short. If we are back on the record, I'll get started.

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THE REPORTER: Back on the record.
MR. BOWEN: All right. Thank you, Jeanne.
EXAMINATION
BY MR. BOWEN:
Q Okay. Earlier, Mr. Hall, you said that -- and I'm paraphrasing -- that candidates of choice for Latinos could be a candidate of any racial or ethnic group; is that correct?
A Yes, that's my understanding.
Q Okay. Is it also your understanding that they could be from any political party?
MS. GOLDMAN: I'm going to object to the degree it calls for a legal conclusion.
A I'm going to hesitate to answer that question because I'm not sure. I want to say I don't know because I don't want to misstate the law.
MR. BOWEN: Okay. I'm going to drop an exhibit in the chat. I apologize that I'm not here to have handouts for you guys, but it should be very short. So let me know when this comes through.
(Hall Exhibit No. 18 introduced.)
MR. BOWEN: And if someone can -- once you get it and are able to download it, let me know; and I can screen share as well to make it easier.
THE REPORTER: You can save it to the

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desktop if you want to.
THE WITNESS: Okay. I'm not sure it's going to let me.
Does someone else have the ability to screen share?
MR. BOWEN: If it's showing up in the chat, I can just screen share and walk through it; and if it's placed in the chat for the record is everybody okay with that?
MS. GOLDMAN: Yes.
MR. HUGHES: Yes, please.
MR. BOWEN: Okay. Perfect.
Q (By Mr. Bowen) So right here I'm showing that I'm on the Secretary of State's website. This is a picture of the website. Is that what you're seeing?
A Yes.
Q Okay. And this is from the November 8, 2020 general election; is that correct? Sorry, 2022. My apologies.
A Yes.
Q So this would be under the maps that were enacted or the map that was enacted in 2021; correct?
A Yes.
Q Okay. And this is the result for Legislative District 15. Is that what you're seeing, also?
A Yes.
Q All right. And this indicates the State Senate race

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for Legislative District 15 where I'm dragging my cursor right here. Is that what you're seeing as well?
A Yes.
Q Okay. And there was some discussion earlier of Nikki Torres and her race for Legislative District 15.
Are you seeing that there are currently three candidates here in Legislative District 15?
A Sorry. I only see two.
Q My apologies. I see Nikki Torres. Do you see that?
A Yes.
Q Okay. And then Lindsey Keesling?
A Yes.
Q And then a write-in candidate who received about a quarter of a percent of a vote. Is that what you're seeing?
MR. HUGHES: Object to form.
A I don't know if that was one person or several, but yes, I see the line for write-in candidates.
Q (By Mr. Bowen) Okay. Fair enough.
Nikki Torres, what political party does she identify with?
MS. GOLDMAN: I'm going to object to the degree it calls for speculation, other than the fact that you're asking him to read to you what you downloaded from the Secretary of State's website.

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A The screen says prefers Republican party.
Q (By Mr. Bowen) Okay. And she won a little over 67 percent of the vote; is that correct?
MS. GOLDMAN: Objection, lack of foundation, calls for speculation.
A That's what this says, yes.
Q (By Mr. Bowen) Okay. And based on discussions earlier, the map that was enacted had just over a 50 percent Hispanic CVAP; is that correct?
MS. GOLDMAN: Objection, misstates the testimony.
A Can you restate the question?
Q (By Mr. Bowen) Sure. You were discussing just a moment ago with Mr. Hughes that under the map as enacted the Hispanic CVAP according to the census data in 2020 was about 51.5 percent; is that correct?
MS. GOLDMAN: Objection, misstates the testimony and evidence.
You can answer.
A If I understand your question, yes.
Q (By Mr. Bowen) Okay. So then in order for Ms. Torres to garner 67 percent of the vote in a district that is composed of roughly 51 percent Hispanic CVAP, she would have to garner a large chunk of the Hispanic vote; is that correct?

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MR. MULJI: Object to form.
MR. HUGHES: Objection, incomplete hypothetical, and calls for speculation.
MS. GOLDMAN: Lack of foundation.
A Yeah, I -- I don't know. I don't feel comfortable that I have the expertise to answer that.
MR. BOWEN: All right. We'll let it be. I don't have any other questions.
Thank you for your time today, Mr. Hall.
MS. GOLDMAN: Okay.
E X A M I N A T I O N
BY MR. MULJI:
Q I just have a couple of questions.
A Okay.
Q Maybe just one, actually. I'm going to share my screen with you. There was some discussion about Lindsey Keesling in the last couple rounds of questioning.
You had mentioned that you had heard that she may have been a write-in candidate; is that right?
A What I understand is that there was only one declared candidate for the Senate seat at the end of filing week, so that she was not a candidate who filed to run for that seat in May of 2021.
Q I see. Okay. And during the primary election do you know if Lindsey Keesling was on the ballot?

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MS. GOLDMAN: Objection, calls for speculation, and lack of foundation.
A She was not -- She did not file for the Senate race, but I believe she sought to get into the race as a write-in candidate in the August primary.
Q Okay. Let me just share my screen real quick.
(Website displayed.)
Q I'll represent to you that I'm showing you the Secretary of State's website and the results from the August 2nd, 2022 primary. I'm scrolling down to the results from Legislative District 15 State Senate race.
Do you see any election results for a named candidate Lindsey Keesling?
A No.
Q Is it your assumption that perhaps the write-in -- that she might have been the write-in candidate?
A Yes.
MS. GOLDMAN: Objection, calls for speculation, and lack of foundation.
Q (By Mr. Mulji) To that point do you know?
A That is my understanding is that she was a write-in candidate for -- in the August primary; and the fact that she appeared on the November ballot is likely to mean that she received enough votes as a write-in candidate to appear on the November ballot.

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Q That she received in this election -- Well, is it clear how many votes she received from these results?
MS. GOLDMAN: And again, I want to object because we are mixing elections here, the primary and general.
MR. MULJI: Sure.
MR. BOWEN: I would like to join.
Q (By Mr. Mulji) In this primary election she doesn't appear -- Her name doesn't appear on this ballot, does it? Or it doesn't appear in the results.
A Reading these results, I would conclude that she received between one and 630 votes as a write-in candidate in the August primary.
MR. MULJI: Okay. That's all.
MS. GOLDMAN: That's it? You're done?
MR. MULJI: I'm sorry. That is it. I'm done. Thank you.
MS. GOLDMAN: All right. Good evening. We'll reserve signature, Jeanne.
(Deposition concluded at 4:32 p.m.)
(Signature reserved.)

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CERTIFICATE
STATE OF WASHINGTON)
) SS
County of King)
I, the undersigned Washington Certified Court Reporter, pursuant to RCW 5.28.010 authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify:
That the annexed and foregoing deposition of the witness named herein was taken stenographically before me and reduced to typewritten form under my direction.
I further certify that the witness examined will be given an opportunity to review and sign their deposition after the same is transcribed, unless indicated in the record that the parties and witness waived the signing.
I further certify that all objections made at the time of said examination to my qualifications or the manner of taking the deposition or to the conduct of any party have been noted by me upon the deposition.
I further certify that I am not a relative or an employee or attorney or counsel of any of the parties to said action, or a relative or employee of any such attorney or counsel, and that I am not financially interested in the said action or the outcome thereof.
I further certify that the witness before examination was by me duly sworn to testify the truth, the whole truth, and nothing but the truth.
I further certify that the deposition, as transcribed, is a full, true and correct transcript of the testimony, including questions and answers and all objections, motions and exceptions of counsel made and taken at the time of the foregoing examination and was prepared pursuant to Washington Administrative Code 308-14-135, the transcript preparation format guideline.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of January, 2023.

Jeanne M. Gersten, RDR, CCR
Registered Diplomate Reporter
Washington CCR No. 2711
License effective until April 2, 2023
Residing at Seattle, Washington

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CHANGE/SIGNATURE SHEET
I, the undersigned, ADAM HALL, hereby certify that I have read the foregoing deposition and that, to the best of my knowledge, said deposition is true and accurate, with the exception of the following corrections listed below:

PAGE	LINE	CHANGE	REASON

_____ _____
Signature Date

Witness: Adam Hall
Soto Palmer, et al. v. Hobbs, et al.
USDC Western District of Washington
Cause No. 3:22-cv-05035-RSL
Date: December 19, 2022
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

SUSAN SOTO PALMER, et al.,
Plaintiffs,
V Case No: 3:22-cv-05035-RSL

STEVEN HOBBS, in his official capacity as Secretary of State of Washington, and STATE OF WASHINGTON,
Defendants.
_____/

REMOTE DEPOSITION UPON ORAL EXAMINATION OF
JOSE A. TREVINO
Monday, January 9, 2023
11:00 a.m. to 11:38 a.m.

REPORTED BY: Tamika Burnette, RPR, WA CCR No. 21002053

JOSE TREVINO - 01/09/2023

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EXAMINATION INDEX
* * *

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By Mr. Gaber 4
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EXHIBITS

NUMBER: DESCRIPTION: PAGE:
(NONE WERE MARKED.)

Monday, January 9, 2023
9:00 a.m.
* * *
JOSE A. TREVINO,
The witness herein, after having been first duly sworn to tell the truth, was examined and testified as follows:
EXAMINATION
BY MR. GABER:

Q. Good morning. My name is Mark Gaber, and I'm one of the plaintiffs -- or the attorneys -- I'm one of the attorneys for the plaintiffs in this case, and I'll be taking your deposition.
Could you please state your name for the record?
A. Jose A. Trevino.
Q. Have you been deposed before?
A. Yes.
Q. How many times?
A. Two for sure, possibly three.
Q. And I'm familiar with one of those, the lawsuit involving the Washington Voting Rights Act in the Yakima County Board of Commissioners.
What were the other cases?
A. The other ones were when I was a police

officer, and the one that I know for a fact was on a lawsuit that was filed.
Q. Were you a party in that lawsuit?
A. Yes.
Q. And what was the nature of that lawsuit?
A. It was a use of force.
Q. Was it involving your use of force as a police officer?
A. Yes.
Q. And when was that lawsuit?
A. That was when I was a police officer. I'm going to say probably -- well, I've been out of that for over 15 and a half years, so it's been about 20 years. I don't recall.
Q. Well, the reason I asked is to see what your familiarity was about how depositions work, so I'm not too interested in the substance of that lawsuit.
Basically, the four things to remember is that the court reporter is transcribing what we're saying, so it's important that we not talk over each other, and that we aim to talk a little slower than we might otherwise do, and that will help her get an accurate record. Are you okay with that?
A. Yes.
Q. And then another is that even though it might

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such input?
A. No.
Q. Did you follow the redistricting process as it was happening?
A. A little bit, whatever was reported in the news.
Q. What was your impressions of what the commissions were?
A. I think everything should have been left the way it was, in my opinion.
Q. What do you mean by that?
A. The way it was districted. The way the district was already set up, it should have been just left alone.
Q. Now, the districts were -- the populations didn't match the census, right? So do you think it should have stayed exactly the same as it was or --
A. Yes.
MR. HOLT: Objection to form.
Q. (By Mr. Gaber) So in your view, it should have stayed the way it was prior to the last census?
A. Yes.
Q. What district did you live in in the last decade's plan?
A. You're talking about legislative or --

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Q. Legislative?
A. Fifteen.
Q. Do you know any of the commissioners personally?
A. Which ones?
Q. The redistricting commissioners. Do you know Paul Graves?
A. No.
Q. What about Joe Fain?
A. No.
Q. April Simons?
A. No.
Q. Or Brady Walkinshaw?
A. No.
Q. I gather you've not spoken to any of them?
A. No.
Q. Did you have any conversations with any legislatures about the redistricting process as it was unfolding?
A. Not that I can recall. No.
Q. Why didn't you give any input?
MR. HOLT: Objection. Form.
THE WITNESS: I didn't know -- I don't know how to do that. I don't know the process.
Q. (By Mr. Gaber) Do you know Paul Campos?

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A. No.
Q. Do you know Alex Ybarra?
A. Yes.
Q. Did you and Representative Ybarra discuss redistricting at any point?
A. No.
Q. How long have you known Representative Ybarra?
A. I don't recall exactly when we met, but it was when he was on the school board, I think, or something to do with the schools. Yes, during like a dinner that we went to.
Q. Have you discussed redistricting for the state legislative plan with Benancio Garcia?
A. No.
Q. Do you know Benancio Garcia?
A. Yes.
Q. How so?
A. We went to school together, and he's come to visit me at City Hall. That's how I know him. I've known him for many, many years.
Q. Where does he live?
A. I don't know. I'm thinking either Sunny Side or Greenville. I don't know.
Q. How did you become involved in this case?
A. So Jim Troyer called me about a senate seat --

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and I don't remember specifically how this came up -- but through that conversation this came up, and he asked if I would participate in it, and I told him yes. I wanted to be a voice.
Q. When Jim -- when did Jim Troyer call you?
A. I don't remember that. Last year sometime for the senate thing.
Q. And when he was calling you, was it in relation to being a potential candidate for the senate?
A. Yes.
Q. And what -- what did you talk about with him about that?
A. I just told him I wasn't interested at this time. I was happy as mayor.
Q. Is there any other reason you -- did you give some thought as to whether you might run for the state senate?
A. I had, but I'm happy where I'm at. I like being mayor.
Q. And before Mr. Troyer called you, had you considered the possibility of running for the state legislature?
A. Yes and no.
Q. What do you mean by that?
A. Well, I thought about it, but I -- there's -- I

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have -- you have to have name recognition. You have to be -- have some successes. You have to -- you just got to do more than just throw your name in the hat, I guess is what -- is the best way I can describe it.

Q. Did you tell him that you weren't interested right away on that phone call? Was it just one phone call?

MR. HOLT: Objection. Form.

THE WITNESS: That was two questions, I'm sorry. I didn't get the last one.

Q. (By Mr. Gaber) Sure. We'll just start over. So did -- how many phone calls, with Mr. Troyer, did you have at that time?

A. I'm going to say one because I don't recall any others, but there could been others.

Q. So is it your recollection that he raised the idea of running, and then in that same phone call, you told him that you would not be interested in being a candidate for the district?

A. That's correct.

Q. And then in that same phone call, did Mr. Troyer then ask whether you would be interested in being an intervenor for in the litigation that's pending?

A. Yes.

Q. And what did he say to you about the focus or

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reason behind collecting intervenors for the lawsuit?

A. I guess I'm going to have to say I don't recall, because at some point I knew what it was about, but I don't know who told me; he could have.

Q. Before Mr. Troyer reached out to you, had anyone else reached out to you about potentially being involved in the lawsuit?

A. No.

Q. And then after Mr. Troyer and you spoke, how long was it before you had contact with another person to talk about being involved in the lawsuit?

A. I don't know. I honestly don't recall.

Q. Who was the next person that you had spoke to about being involved in the lawsuit?

A. I'm going to have to say Drew, but I don't know for what representative it was.

Q. And that's Drew Stokesbary?

A. Yes.

Q. And he represents Yakama --

A. That's correct.

Q. -- in this case?

A. Yes.

Q. Did Mr. Troyer explain why he thought you would be a good person to be involved in the lawsuit?

A. He probably did, but I don't recall.

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Q. Did you and he exchange any other communications, e-mails or text or the like?

A. No.

Q. And at that point, what did you understand your role would be in the lawsuit?

A. As an intervenor.

Q. And that would be to defend the map that was enacted that was a challenge to it?

A. Yes.

Q. And were you -- you were comfortable defending the map that was enacted by the commission?

A. Yes.

Q. And why is that?

A. Because I already felt it shouldn't have been changed, so it's already been changed, so I feel that -- that it should be set right there. And to keep changing it to fit one party or one group of people isn't fair.

Q. So you were -- you're okay with the map as it's -- sorry. I'll start over.

You were okay with the map as it was enacted. You were fine defending that and keeping that map in place; is that fair?

A. Yes --

MR. HOLT: Object to form.

THE WITNESS: Yes.

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Q. (By Mr. Gaber) And sitting here today, is that still true, you're okay with the map as it was enacted by the commission staying in place?

A. Yes.

Q. And would it be your goal that the map, in fact, not change as a result of this litigation?

A. Yes.

Q. And so do you see yourself as your primary goal here as to defend the map and have it remain the same?

MR. HOLT: Objection. Form.

THE WITNESS: Yes.

Q. (By Mr. Gaber) When you spoke with Jim Troyer, did he ask you for suggestions for other candidates who could run for the new LD 15?

MR. HOLT: Objection. Form.

THE WITNESS: I don't know -- I guess I can't say yes because I don't know that he did, but I know that I did offer him one name.

Q. (By Mr. Gaber) And what name was that?

A. That is Elpidia Saavedra.

Q. Could you spell that for the court reporter?

A. I don't know how to spell it, sorry.

Q. Could you say it more slowly for me?

A. Sure. It's Elpidia, and I'm thinking it's E-L-P-I-D-I-A, and I don't know how to spell that.

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Q. And is that a C?
A. Saavedra I believe is with an S.
Q. All right. Who is this person?
A. She is the current mayor of the City of Toppenish.
Q. Okay. And why did you recognize her as a candidate?
A. Because I met with her. I think she holds good values. I like her policies. I like her politics.
Q. Is she a republican?
A. I don't know that.
Q. And did you and Mr. Troyer discuss any other potential candidates?
A. I don't recall talking about any other candidates.
Q. Do you know Nicki Torres?
A. I know her now, but I didn't know her.
Q. And when did you first -- I mean, do you know her personally? Have you met her?
A. No. I have never met her.
Q. Okay. When did you first become aware of her?
A. When her name was announced as a candidate.
Q. And were there any other candidates that you were interested in having run, other than the person whose name I'm not going to be able to pronounce?

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A. No. I can't recall of anybody else.
Q. Did Ms. Torres campaign in your community?
A. I don't know.
Q. Did you attend any events that she held?
A. No. I never met her.
Q. Is that -- as the major of a town in the district, is that unusual?
MR. HOLT: Objection. Form.
THE WITNESS: Well, she's in Pasco, so that's quite a ways out. So that's not unusual, I wouldn't think. The locals, yes, they usually do come visit the electives here.
Q. (By Mr. Gaber) Are the -- the two new state representatives, who are they?
A. Two new elective representatives where?
Q. In District 15.
A. I think it's -- well, it's Brian Sanders or Sanderson, and I don't know who the other one is. I can't think of the other one.
Q. Do you know those individuals?
A. No. Well, I don't know who the other one is. I might, but I don't recall off the top of my head who the other one is.
Q. Did you vote in the November 2022 election?
A. Yes.

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Q. Did you vote for the republican candidates?
A. Yes.
Q. Were there any candidates or races that you didn't vote in?
A. I don't understand the question.
Q. Were there any offices on the ballot where you didn't cast a ballot in that election?
A. I guess I don't really understand the question. If you're asking -- what exactly are you asking?
Q. Like, was there -- maybe there was -- for example, if there was mayoral election or if there was a state representative election or any other office where you left that race blank on the ballot.
A. I can't think of ever doing that.
Q. Have you spoken with Jim Troyer since the initial call back --
A. No.
Q. -- last year?
A. No.
Q. And other than your attorneys, have you discussed this case with anyone?
A. No.
MR. GABER: Well, I have no further questions for you, Mr. Trevino. Thank you for your time. Mr. Hughes may have some questions.

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THE WITNESS: Thank you.
MR. HUGHES: No questions. Thanks.
MR. HOLT: I've got just a couple real fast, Jose.
THE WITNESS: Okay.
EXAMINATION
BY MR. HOLT:
Q. You mentioned, when Mr. Gaber asked you about why you wanted to become involved in this litigation, you said, "I wanted to be a voice." What did you mean by that?
A. Well, there's quite a bit of stuff that I could say, but I'll just leave it to this, that: I don't believe that two or three people are the entire voice for a race of people, and that's kind of what this feels to me when they're suing and saying they're the voice of the Latinos or representing the Latinos. So I feel this way. I'm a voice for us other Latinos that are sitting here going, "We don't believe in your politics or your positions," and so we all need to be represented and be a voice in a fair -- in a fair way, I guess.
And then the other one is that it just seems really, really unfair to me that -- because people can't win because their politics don't match what the majority of people here believe, that they have to

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

* * * * *

Remote Deposition Upon Oral Examination of Alex Ybarra
December 5, 2022

* * * * *

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

No. 3:22-cv-05035-RSL

REMOTE DEPOSITION UPON ORAL EXAMINATION OF
ALEX YBARRA

Monday, December 5, 2022
9:00 a.m. to 12:35 p.m.

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EXHIBITS

NUMBER	DESCRIPTION	INTRODUCED
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2	Intervenor-Defendants' Objections and Responses to Plaintiffs' Second Set of Interrogatories	114

December 5, 2022, Remote Proceedings:
PROCEEDINGS: 9:00 a.m.
(Discussion off the record.)

ALEJANDRO "ALEX" YBARRA,
having been sworn/affirmed on oath to tell the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MS. LEEPER:

Q Okay. Good morning, Representative Ybarra. We just met off the record, but for the record my name is Simone Leeper, and I'm counsel for the plaintiffs in the Soto Palmer v. Hobbs case.

I'm going to identify some other individuals that you'll see on your Zoom screen now, which is the other attorneys in the room. So obviously you know your Representative Drew Stokesbary. Also online is Kate Worthington for the Secretary of State and Andrew Hughes for the State of Washington.

Off video but also joining us are some additional people from the counsel of the plaintiffs' team, and that's Annabelle Harless, Ben Phillips, Mark Gaber, Aseem Mulji, and Ellen Boettcher. So they'll be joining us today but staying off camera.

I'd love to go over just some of the ground rules of

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In larger communities it's a lot different, but in my smaller communities that's kind of how it is, so --
Q Do you have any opinion about when Latino people do vote, if they tend to vote to prefer one party over another party?
A It depends on the community. Again, I think in the larger cities and stuff that maybe -- it might be like that; but I know in my community when people know each other we're going to vote for the people we like, and it doesn't matter the party -- Latino voters as well.
And I think in the bigger cities where there's -- there isn't this, "I know Jim," or, "I know Bob, or Suzy. I'm going to vote for them because they're my friends; and we talk to our friends, and they vote that way."
I think it's a lot different types of elections that happen in bigger cities.
Q Okay. And so you say that you've viewed your race broken down. You did that calculation yourself for your elections, --
A Yes.
Q -- looking at how they would break down by race using Spanish surname.
Have you seen analyses like that for any other elections happening in LD 13?
A No, because I haven't looked. You know, and again I

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haven't looked because I only did that one race that I was running against one person. That's the only race I've had, so I haven't gone into the depth that I did for my original race --
Q And that was --
A -- where I had somebody against me.
Q And that was the 2019 race; is that right?
A Yes. November, 2019.
Q Have you seen any election returns broken down by race for any other districts?
A Yes. I don't recall any of the details of them, but yes, I have.
Q Which districts were those?
A Well, they've got, you know, certain people, databases have different versions of them. So if you want to look in King County, there's folks that do that kind of analysis and stuff.
But I kind of looked at my district and my counties where I represent folks, and then looked at those and looked at the patterns to make sure I understood where I needed to put my signs and who I needed to talk to to make sure I get it -- I was like, you know, to come in.
Q Have you looked at any election returns broken down by race for LD 15?
A I did because when the -- when the lawsuit came out,

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then people started printing -- I think even in the newspaper, if I'm not mistaken, they started printing about in LD 15 how many Latino voters there were, how many were voting, where they lived and those kind of things. So I saw just a general -- a general representation of what the numbers looked like.
Q And those are sort of representations you're saying you saw in news articles?
A If I remember correctly, yes.
Q Okay. Do you know what ecological regression is?
A No.
Q How about ecological inference?
A Nope.
Q Have you studied any opinion polls focused on Latino voters in Southcentral Washington or Washington more broadly?
A Not that I recall.
Q Do you know what the term racially polarized voting means?
A No.
Q Have you ever viewed election results broken down to show the preferences of White voters?
A Just generally Democrat, Republican.
Q And what have you learned about that?
A Not so much Whites, but more just in general across

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the board how many Democrats vote -- or what the Democratic votes look like and what the Republican -- you know, the differences between those two.
And what I learned is that the more conservative folks that run for office usually win in Central Washington.
Q Do you have any knowledge about whether Latino voters and White voters tend to prefer the same candidates or different candidates for state legislative races in Southcentral Washington?
A I -- I don't -- I don't think there's a difference -- I think it's just a likability thing. I think a lot of folks --
For instance, I'll give you an example. Bruce Chandler, I'm sure everybody loves Bruce, and he gets voted in every year; and he's a great guy, so I think people know that. They vote for Bruce.
And I don't think -- I think -- I'd like to hope that the best candidate wins.
Q And are you basing that opinion on any sorts of facts or data?
A Well, I got elected, and I'm Hispanic. And I live in this area, and I'm conservative. And I think I got voted in because I'm conservative, even though I'm Hispanic, so --

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Q Okay. Could you tell me what you know about the process of redistricting in general?
A Just in general, there's a law or -- a law out there that says you shall get two Republicans, two Democrats are part of the team. They're going to hire a chairman or chairwoman to run the group.
And then these four folks get some staff to help them draw the lines. They get software, and then they start drawing the lines to make sure they have the same amount of people in each district.
Q Do you know anything in particular about the process of redistricting state legislative districts in the state of Washington?
A Can you clarify --
Q Yeah.
A -- your question?
Q So you sort of told me what you know about redistricting in general, but do you have any more specific information about the process of redistricting specifically Washington's state legislative districts?
A Well, I can tell you that there's some -- some requirements about what the redistricting team has to do is to make sure that, you know, the folks that live in a particular area are kind of -- you know, stay together, you know, for instance. At least that they try to do

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that.
They try to make sure if there's any physical barriers, like the Cascade mountains, you don't want to cross them because it's kind of hard to do, or things like that. And they want to -- I think they have to be -- Every district has to be continuous. It can't be broken up in pieces.
So those are kind of the general rules that they have out there.
Q And what's informing your understanding of state legislative redistricting in Washington?
A Because I think I -- I think there was a -- Somebody gave me a paper or something, if I remember right, and said, "How does it work?" And this is how it works, like a two-pager.
Q And was that during the 2021 redistricting process?
A Yes.
Q What do you know about the Federal Voting Rights Act?
A Not much.
Q What little do you know?
A The vote has to be fair, and fair depends on where you're sitting. So if you're in Yakima, it's going to be different than it would be in Quincy, so --
Q You currently live in Legislative District 13; is

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that correct?
A I do.
Q And prior to the 2021 redistricting you lived in Legislative District 13 as well; is that right?
A State that again.
Q And you also lived in Legislative District 13 prior to the most recent round of redistricting; correct?
A Yes.
Q And as we've discussed, you currently represent LD 13 in the Washington legislature; correct?
A Yes.
Q Do you have any objections to the configuration of LD 13 that resulted from the 2021 redistricting process?
A I wouldn't call them objections, but I want Mattawa back and Schwana. They -- I live in Grant County. They live in Grant County. Our utilities are Grant County PUD.
They live in -- They go to the Mattawa or the Waluke School District, which is my -- As a school board member I represent the Waluke School District. So they're a Grant County community, not a Yakima County community.
And so being in the 15th, I think they're -- You know, they may not get the representation that they may receive if they were -- have representation from the 13th.
Q And do you see LD 13 as representing Grant communities more so than Yakima communities?

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A To some extent, yes.
Q What part of your district would you prefer to lose to gain back Mattawa and Schwana?
A Yakima -- Yakima areas.
Q And why is that?
A Because they're close. They're -- Because Yakima is farther way from where my district is. It's the way far south part of my district, my new district.
And so there's a piece right in the middle of my district that is much closer to the center of the District 13 than some of those Yakima areas.
Q Do you believe that you would be harmed if the configuration of LD 15 was to be changed right now?
A Would I be harmed?
Q Yes.
A Yeah. Yeah, I think so.
Q How so?
A Well, I'm already starting to go to the new areas that I represent and speaking with those constituents and, you know, figuring out what their issues are and trying to help them.
Session is coming up in January, and so there's a lot of work to be done to support all my new communities that I represent. And so all that work that I've been putting in and the rest of the legislators of the 13th

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have put in to try to support those areas, it's not going to happen.

And so I think my constituents that I lose and then gain from Mattawa, I've lost all that homework. You know, for instance, I haven't -- I spoke to some of the folks in the Mattawa area to see if things are going good with their new legislators and make sure that they don't get, you know, lost in the shuffle with the new legislators that are going to represent them. So I'm kind of looking out for those guys just because I don't want them to -- because of the changes I don't want them to suffer because of it.

And again, I think because I now represent more of Yakima that the work I've been putting in to support those guys, because of redistricting they may lose as well -- lots of folks.

Q So do you understand yourself to be involved in this lawsuit as an intervenor to defend against further changes to the map?

A I guess I would tell you my -- I think my role as an intervenor is to explain that I represent everybody, and I represent anybody that -- Wherever that map is, I'm going to represent them, no matter the color. If they're Hispanic or not Hispanic, I'm going to represent them. I just want to make sure that nobody is harmed. That's all.

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If this intervention comes in, I just don't want anybody harmed. That's my whole goal.

Q And so you don't understand yourself to be suing the state to seek further changes to the map; is that correct?

MR. STOKESBARY: Objection, misstates the testimony.

Q (By Ms. Leeper) You can answer.

A I -- So you guys lost me there.

Q Yeah, I'll ask it again.

So do you understand yourself to be suing the state to seek further changes to the map?

A I'm thinking about it. Good question. I'm trying to figure it out.

I guess I -- You know, coming into this thing I didn't think that was -- I just never thought of that. So I guess that's the best I can do for you.

Q Yeah, I guess my question is do you see yourself or understand yourself to be suing the state?

A No, so -- I guess not.

Q And have you -- So you see yourself as just having intervened as a defendant to keep further harmful changes from happening to the map; is that correct?

A I think my role is to explain -- explain that as a Hispanic legislator I represent whoever is in my district, and I'm here as a Hispanic legislator that can support the

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Hispanic community.

And I want to make sure that whoever is going to be listening to this trial knows that the folks in my districts have a legislator that is going to support them. I just happen to be a Hispanic legislator that doesn't work those communities, no matter what those lines look like.

But I want to make sure that the folks in Yakima area know and understand that I'm a Hispanic legislator, because I think that's what they're looking for. I think that the folks that sued don't think they're getting any representation from Hispanic elected officials. Well, I'm a Hispanic elected official that supports anybody in those districts, including all the Hispanics.

And so I just want to make sure that they understand that I represent those folks, no matter the color. But I am a Hispanic legislator that can do some good because I am Hispanic, and I represent Yakima County and all the folks that are in those lines. So that's what I want the state to know, or whoever is going to read this or be the trial judge, or whoever.

Q So you're sort of here to just give voice to the fact that you view that Latino representation already exists?

A Yes.

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Q And you don't think that there needs to be any changes made to the map to make that happen?

A I -- I think it's up to whoever is going to draw the map. I will represent anybody in my district. No matter the lines, I will represent anybody in my district.

And again, I will have a keen understanding of the Hispanic population, wherever those lines are.

Q But you personally are not really taking a position on whether this map needs to change; is that right?

A Yeah, I guess I don't have a position, but I will represent all Hispanics that live in my district and everybody else in that district.

Q Do you think that you would be harmed if the numbering of LD 15 was changed to LD 14?

A The numbering?

Q Yeah.

A Like from -- You mean just change the numbers, like call LD 14 the 15th?

Q Yes.

A It doesn't matter --

Q Okay.

A -- to me.

Q Did you ever testify at any of the public hearings held by the 2021 Washington Redistricting Commission?

A Not that I recall.

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Q Did you ever submit any written testimony to the 2021 Washington Redistricting Commission?
A Not that I recall. I think I listened in to one of their meetings, but I don't recall because it was a long time ago, so -- I know I listened in to one of them.
Q You mentioned earlier that you spoke with Commissioner Graves, Paul Graves, during the 2021 redistricting process; is that right?
A Yes, it is.
Q Did you ever speak with Commissioner Joe Fain?
A No. I don't think so.
Q Okay. How about Brady Walkinshaw?
A No.
Q Commissioner April Sims?
A No.
Q And what about the Chair of the Commission, Sarah Augustine?
A No. I have spoken to her prior to her becoming Chair. I think I had met her one time, once or twice, like a year or two before.
Q But you didn't speak with her during the 2021 redistricting process?
A No.
Q How many times would you say you spoke with Paul Graves during the 2021 redistricting process?

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A Two or three times.
Q And when would you ballpark that those communications happened?
A Prior to the preliminary map. I think I texted him or I sent him an email because one of my constituents in that -- So the 12th and the 13th obviously butt up against each other, and the line on the 12th has the new Quincy high school in the 12th. The rest of all of Quincy, except for the high school, is in the 13th.
So I called Paul and said, "Paul, can you make those changes? Can you put the high school in the 13th? Because the high school is in the 12th, and I would prefer, if possible, if you can move the high school into the 13th with the rest of the town." So --
And that was the first conversation I had with him.
Q And was that change done in the final map?
A It was. I was very happy about that one.
Q And you mentioned earlier that that might have been by email or text. Did you communicate with Commissioner Graves by email and text otherwise?
A I think I sent you guys that stuff, and I think -- I know -- I think he might have sent us an email that said, "I want to have a discussion with you guys." And it was Representative Dent and I because I think he was going over the preliminary maps that were going out and telling

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us that we might get King County.
So I think there was some texts or communication. I think I sent that to you, whatever I could find on my phone, and email. That I think -- I think that's what we did is just let's set up a meeting at these times.
Q And that meeting happened then by phone or Zoom; is that right?
A Yeah. I think it was by phone, if I remember right, but I don't recall off the top of my head.
Q Okay. And so would you say that you had two or three sort of phone or Zoom calls with Commissioner Graves over the course of the process of redistricting?
A Yes. We had the Quincy high school was one call, and then the call with Representative Dent was -- which was the first map that came out, the preliminary map.
And then I think after the -- after the -- Right before the last maps or right after the last maps came out I think we had a discussion about what happened -- I think, so --
Q Did you ever discuss with Commissioner Graves the configuration of Legislative Districts 14 or 15?
A Yes. We discussed -- I discussed Mattawa and Schwana, that area, and said, "Why did we lose that?"
Q And you also --
A Why we could --

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Q Go ahead, please.
A Why we could potentially lose those areas.
Q And the answer that he gave you was that you would be losing those areas because you were gaining part of King County; correct?
A Yes. And losing Lincoln. So we were discussing -- Because I didn't want to lose Lincoln, and I didn't want to lose Mattawa; but he -- The preliminary maps were saying District 13 would go to King County, and so it was like, "Oh, man, I don't want to lose Lincoln. I don't want to lose Mattawa and Schwana."
Q And you ultimately did not have LD 13 go into King County; correct?
A Correct.
Q But you did lose Mattawa and Schwana?
A Yes.
Q And why was that?
A Well, when we lost Lincoln, that's about 25,000 people, so they had to give me 25,000 people -- approximate numbers.
So because I lost Lincoln, Lincoln was going to go to the 7th. So I lost Lincoln, which is 25 -- I think it was like 25,000 voters or so, and so they had -- The Redistricting Commission had to come up with 25,000 people to give me in the 13th. And so they said okay, you've got

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Mattawa, Schwana, Yakima County or King County. And so then they had to make a decision at their level.

This is my understanding of what they were doing. They had to come up with 25,000 people, and where were they going to -- those 25,000 people going to come from? Where would they -- How were they going to get redistricted into the 13th? And so they came up with what they came up with. They didn't give me King County, but they gave me much more of Yakima.

Q But you did ultimately lose Mattawa and Schwana?

A Yes.

Q Do you know how big about Mattawa and Schwana are in terms of population?

A It's not huge. I think it's like 6,000, maybe, if that. So it's not tons of people.

Q So you needed 25K because you lost part of Lincoln?

A I lost all of Lincoln.

Q You lost all of Lincoln?

A (Nodded.)

Q Do you know why they didn't make up 6,000 of that 25,000 by allowing you to keep Mattawa and Schwana?

A No, I don't know why they did that, other than after the fact I was told they need more Hispanics in the 15th.

Q And who told you that?

A Who told me? Oh, when the lawsuit came out. When

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the lawsuit came out it was like, "So what exactly did they do, or why did they do it?" And they kind of explained it in the newspaper. They kind of explained that.

Well, at least the newspaper said that the redistricting commissioners wanted a large Hispanic population, voting population in the 15th. In order to get that they had to go to communities that had a large Hispanic population, which was Wanapum, Schwana, Othello, which is very far away from Yakima County, so --

Q Do the parts of Yakima County that you were given have a large Latino population?

A I'm not quite sure, but east -- So I've got like East Valley, east of Yakima, the City of Yakima, that does. And I got Naches, so there's a lot of Hispanics out there as well.

But not -- I don't think the -- But not tons because that's why they took Mattawa and Schwana, because they had lots of Hispanics in those cities; and I think the areas I was given have less Hispanics in those areas. Because they wanted the 15th -- According to the newspaper, they wanted more Hispanics in the 15th.

Q Did Paul Graves ever talk with you about you losing Mattawa and Schwana in part because of the large Latino population there?

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A Not that I recall. It was mostly -- The discussion we had was mostly about King County.

We didn't want King County. We didn't want to go over the mountains, so -- Because it's a two-hour drive, two and-a-half-hour drive from where I live, and I sit in the middle of the district.

Q Yeah.

A So two hours that way, and two hours towards Spokane, it's a long ways. So that would be really difficult to get to meetings and things like that in those areas.

Q And how long --

A Lots of miles apart.

Q How long of a drive about is it to the part of Yakima that you got in your district?

A An hour and a half, which is much closer than two and a half hours, so --

Q For sure. Okay.

A And again, that's just driving time if there's no snow, no mountain passes, those kinds of things. So that was another issue for us, how are you going to get over the mountains all winter long when the pass always closes? So --

Q Did you speak with any legislative caucus staffers working on the 2021 redistricting process?

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A Well, there's only a couple people; right?

Q Yeah. I can give you some names, if that --

A Yeah, why don't you give me some names, just so I --

Q Yeah. Did you speak with Anton Grose about redistricting?

A You know, I don't know if he was on that phone call with Paul Graves, the preliminary one. He might have been there, but I -- Paul was doing all the talking, so that's what I recall is just Paul there.

I don't know if Anton was -- I don't recall him being there. I don't remember if he -- I don't recall if he was on the phone call or not.

Q Did you ever speak with Paul Campos about redistricting?

A I don't think I know who that is, so no.

Q Did you at any point in the 2021 redistricting process review draft maps from any of the redistricting commissioners?

A Yes.

Q Which commissioners provided you with draft maps to review?

A I don't think the commissioners gave them to me. I think they came -- There was a website you could go to and grab the maps.

Q And which maps did you view?

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A The whole state of Washington. I created my own map. I grabbed their -- They have software to manipulate the maps, and so I started --
I'm a data analyst, and so I get a kick out of moving maps around and moving populations around. So I just started, you know, saying this, how I would do my own maps and how I would want things, and see if it would work for every district, if that makes sense. Yeah.
Q Yeah, we're all mapping nerds here, so I do know what you're talking about.
A Okay.
Q How many draft maps would you say that you created?
A Well, I betcha I spent 200 hours working on the maps -- 200 hours, yes.
Q Did you --
A Precinct by precinct, numbers by numbers. Ten people in a precinct, I'd move them over and change this to change that, so yeah.
Q Did you share your draft maps with anyone?
A Yes.
Q Who?
A Senator Warnick in the 13th and Representative Dent. I don't think I sent them to them; but we had a Zoom meeting where we looked at the maps, and I said, "This is how it works."

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We had an in-person one, too. I grabbed a map that came from the redistricting website, and I said, "This is what I did. This is what I think, how it could work for us." So maybe -- You know, that's what I did, so --
Q Did you ever share those maps with Commissioner Graves?
A Not that I recall.
Q Did you when talking with Commissioner Graves use those maps as a touch point to request how you would want your district to look?
A I don't recall that at all because I think that he gave us a preliminary. When the preliminary maps came out, then that's when I jumped in and said, "Oh, my gosh, I'm going to get King County. There's no way I want King County."
So I was preparing to talk to Paul Graves about how I would configure to -- configure things so I don't go to King County. So my whole goal was I don't want King County. How do I keep myself on this side of the Cascades.
And so I was working with the maps, and so I could talk to Paul and say, "Paul, I've got a solution for you."
Q Do you recall what software you used to make those maps?
A It was off the website from the redistricting thing.

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And I couldn't move -- I could move it by precinct, so every little map, it was all by precinct. So I could just move the precincts.
And I don't know what the software was called, but I think it came from the redistricting website, so --
Q And do you still have copies of those maps that you created?
A I don't know because I think they saved to the website, if I'm -- This is a while back; right? So I think you could save the maps, I think on the website, but I don't think I saved them to my computer systems or anything.
Q Do you recall if you had to make an account or anything like that to save the maps?
A I think I might have, yeah.
Q Do you recall what email you would have used to make that account?
A No. I've got two. I had my personal, and I've got my Leg. So I don't recall which one it was.
Q And what --
A I don't recall.
Q What is your personal email address? I promise I won't be signing you up for any subscriptions.
A Okay. It's QuincyROO@Yahoo.com.
Q Thank you.

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What did Representative Dent think about the map that you created?
A I think he liked them because it -- The maps I created didn't have King County in our district, so anything to stop that from happening he was liking.
Q And how about Senator Warnick?
A About the same.
Q Did the map you created keep Mattawa and Schwana in your district?
A It depended on the map.
Q Did most of the maps that you created include Mattawa and Schwana?
A If I recall, yes.
And I also got Othello in there sometimes, and sometimes I didn't. Again, just playing with the numbers. Everything was going around. You know, if you've played with the maps, you know what I'm talking about.
Q Do you recall if you ever grabbed the portion of Yakima that ultimately ended up in your map as part of that draft map?
A Yes. Yes, because I had to make the numbers fit, so -- Yeah. So yeah, definitely did.
I didn't go down East Valley, but I did go through the Naches area and started grabbing folks from there when I'm playing with the maps, but yeah.

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Q Was that your preferred configuration?
A Well, my preferred configuration was keeping Lincoln County and keeping what I had, but that wasn't going to work because the 7th had a really small population. The 7th District, which is up north up above Spokane, needed a lot -- They needed like 20,000 people because their population hadn't grown, and everybody else's had.
So where were the people going to come from? And so that -- So it kind of just -- That's kind of where the rub was across the state, at least on the Eastern Washington side.
Q So you're creating maps for statewide to try to make everything add up; is that right?
A Mostly Eastern Washington.
Q And is it correct to say that you were paying particular attention LD 13, your district?
A Yes, but mostly Eastern Washington.
Q And so would you say that you paid particular attention to LD 15 or LD 14?
A I paid attention to all the districts in Eastern Washington because when you're manipulating the 7th it messes up the 4th and the 3rd and the 16th and the 14th and the 15th and the 13th.
So when you move one district it jumbles everything together, so a big puzzle. And so you have to be aware of

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every single district because they all get affected no matter the change, so --
Q So we've talked about the maps that you've made and that you drafted and were playing with and shared with others. Other than the maps that were publicly available on the website, did any commissioners -- or in particular I think it would have been Commissioner Graves -- ever share draft maps with you to look at?
A Not that I recall. I think it might -- They might have been on a Zoom meeting or something, or -- But I don't -- I think he --
I think that the Commission had published a preliminary map, I think. And I think that was the first time I think I saw the preliminary map -- I think. Again, this is a while back, so I'm trying to remember. I thought they published the preliminary map, so -- or they sent it or -- I don't know. Somehow we got it.
And I think it was during the discussions the preliminary maps came out, and they were having folks come online for two or three hours. And they would ask questions about each one, and then people would talk about, you know, we need to keep Mattawa, or we need to keep Quincy; or we need to keep Spokane, or we need to keep -- and people were just coming.
And I think that's when those preliminary maps came

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out. So that's when I -- I'm pretty sure that's when I first saw them.
Q Do you recall any conversations that you have not yet mentioned that you had during the 2021 legislative redistricting process related to the configuration of Legislative Districts 14 or 15?
A No. I mean, just in general. I mean, you know, who's going to -- Am I going to keep Yakima County? You know, people in Yakima County, it's going to get bigger or smaller. You know, who is going to get Othello? Who is going to get --
At the beginning I just never thought that Mattawa would be leaving me. I would not have it. I just assumed -- You know, I just thought I was going to -- It wasn't going to be an issue, and then all of a sudden it was, so --
Q Why did you make the assumption early on that there was no question that you would be keeping Mattawa?
A Because it's in Grant County. It's in Grant County. It was just -- It's like in the center of the district, and it was like -- It's only 30 miles away from where I live, and so -- and I live in, you know, the center of the district and stuff. So I just said, "Oh, yeah, I'm not going to lose that."
And it has no -- There's a big barrier between

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Mattawa and Yakima, which is one, the Columbia River. And then in order to get from Mattawa to Yakima it's an hour, hour and a half drive. So I said, "They're not going to pick up Mattawa. Nobody is going to want to go from Yakima, where they represent, all the way around just to go to Mattawa for the 5,000 there."
It makes a lot more sense for Alex Ybarra and Tom Dent and Senator Warnick to go 30 miles to go to Mattawa -- much more sense, as -- right, as you're driving.
Q Um-hmm.
A And so there's a big barrier between Mattawa and the Yakima County areas, so --
And if you're not familiar with it, there's a firing range. There's an Army firing range right there. So you've got the Columbia River, a major firing range. So nobody lives there for 30 miles, 40 miles.
And again, there's no roads to go from Mattawa to Yakima from there. You have to go all the way around. So it makes no sense for -- Well, it didn't make any sense for me to think I would lose that.
Q So you do view obviously, it seems, Mattawa as having sort of a community connection with your district; is that right?
A Yes.

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Q And not having a community connection with where it was added; is that also right?
A Yes.
Q Do you know Jim Honeyford?
A Senator Honeyford, yes.
Q How do you know him?
A He's a senator, so we work with him.
Q Have you ever discussed this lawsuit with him?
A Not that I recall.
Q Have you ever discussed the legislative redistricting of LD 15 with him?
A Not that I recall.
Q When did you learn that Senator Honeyford would be retiring?
A When he announced.
Q Do you know Nikki Torres?
A I do.
Q How do you know her?
A She used to be the Hispanic Chamber president in the Tri-Cities, so she was a fairly known Hispanic person.
Q And did you work with her in that capacity?
A No. I just saw her at events. I met her a couple -- I met her, and we had conversations.
Q Prior to her running were you aware of the partisan affiliations of Nikki Torres?

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A No.
Q Did you have any guesses about her partisan affiliations or assumptions?
A No.
Q Have you ever discussed --
A I didn't.
Q Oh, please go ahead.
A No, I'm good. I'm fine.
Q Have you ever discussed this lawsuit with Nikki Torres?
A I think I might have mentioned to her that I was a part of it.
Q And when do you think you mentioned that to her?
A Within the last month or so.
Q Is there anything that she said to you about her thoughts on the lawsuit?
A No. No. We just kind of -- I said I'm just part of it because I'm an intervenor, or whatever we call those, and just said so I -- You know, "It's going to come up to trial, and things could change for you and me," something like that.
Q And what did she say?
A She said, "Yeah, I kind of" -- You know, "That's what people are saying," something like that.
And again, it was more of the discussion was about

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if the lawsuit goes through, and depending on how it comes out, you know, we -- our lines may change, so --
Q Did she share any thoughts on how she would or wouldn't prefer the lines to change?
A No.
Q Did you talk about the Mattawa and Schwana issue with her?
A A little bit, but --
Q What did you guys talk about with that?
A Well, she was running for office, so it wasn't during the discussions of the redistricting. It was when she was running for office, the lines were kind of set for the election.
So I discussed with her about Mattawa. So I want her to take care of the folks I was -- my constituents in Mattawa and Schwana. So I said, "Look, it looks like if you win, you're going to be taking care of these guys. Let me tell you about what they're all about, what they need. You know, what great people they are," those kind of things.
Q Other than that did you have any more discussions with Nikki Torres about the legislative redistricting of LD 15?
A Not that I recall.
Q When you had that conversation with her about

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Mattawa and sort of its people and its needs, what did you tell her about the needs of Mattawa?
A Well, there's like the two populations there. You've got the -- you know, just the towns, but you also have the Wanapum Indians that they have, you know, their culture as well and how it intertwines with Mattawa and the school districts.
And so we talked about the school district. You know, some of the things that they have there, some of the issues that they have. Talked about Mattawa. Talked about Grant County PUD because it manages a lot of land and all the, you know, the fish and things like that that are -- Because they sit right on the Columbia River.
And so we discussed all the issues that I knew about that she would probably need to be aware of.
Q Did you ever discuss the redistricting of LDs 14 or 15 with Jim Troyer?
A Not that I recall.
Q Did you ever speak with Jim Troyer about Jim Honeyford's retirement?
A Just in general.
Q What was sort of the general contours of that conversation?
A Well, probably for the last 25 years people were asking Jim Honeyford when he's going to retire. So then

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it was like is he going to retire? You know, it was always a (shrugged). You never know, so --
Q Did you ever talk with Jim Troyer about who might be a good candidate to replace Senator Honeyford in LD 15?
A Yes.
Q How many times would you say you've talked with him about that?
A Two or three times.
Q And when did those two or three conversations occur?
A Probably after redistricting sometime. You know, when people were starting to sign up, put their names in the hat for election. So prior to -- It was -- Well, I take that back. It was prior to when people could sign up to run for election.
Q And it was for this most recent election?
A Yes.
Q Did you speak about any particular potential candidates?
A Many of them. Many.
Q Whose names do you remember?
A Nikki Torres. The guy that won in the 15th, the representative. I -- I can't remember his name. The one that -- the guy that won.
Let's see. Other Hispanic leaders in Yakima County, because they were -- We were trying to find some good

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candidates to run in the -- in those areas. And for me I wanted more Hispanic leadership, more Hispanic representation.
Q Is there --
A I knew the community, the Hispanic community. So those are the people I was mentioning more than others, because I know that community, so --
Q Why did you --
A And I live there.
Q Why did you want more Hispanic representation?
A Well, I don't think it was Hispanic representation. I think it was people that I knew. And the people that I usually know and run around with -- or not run around with. But the things I get invited to, there's a lot of Hispanic leaders out there in Yakima, the Tri-Cities, Quincy, that people know little about; and so I was trying to --
And it wasn't that they were Hispanic leaders. It's that they're not well known. And so I knew that they would -- They could potentially be good legislators, and they just happened to be Hispanic. And so people usually don't hear about those folks, so I was bringing those folks out to the forefront and saying, "These guys will be good." And because they --
That's a lot of the meetings I go to are with

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Hispanic organizations. I knew those people, so -- And I sort of also knew that if you're not, you know, going to the Hispanic Chamber in the Tri-Cities or Yakima, you don't know those people. And so I was just -- I just knew those people would be good to -- might be good legislators, yeah.
Q Was Jim Troyer particularly interested in finding a good Hispanic candidate to run for Senate in LD 15?
A I don't -- I can't read what Jim was looking for. He just asked if I knew folks. You know, because he was -- folks in Central Washington. Because he knew I was -- He knew -- Well, he didn't know, but he knew I was going to the Chamber, the Hispanic Chamber meetings and, you know, on Spanish radio and all the Spanish radios in the Tri-Cities and in Yakima, Moses Lake.
So he knew I was -- You know, those are the types of people I probably would bring up to him.
Q And did he tell you why he was coming to you for recommendations of good candidates?
A Well, he actually didn't come to me. It was other people that came to me. Somebody got called by somebody that got called, and then they said, "Hey, I hear you might know some good folks in Central Washington." And so then it was like, "Okay. Like what are you looking for? For what position, where?"

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Because I know a lot of people in Central Washington, so --
Q And do you recall who told you to reach out to Jim Troyer to give him these recommendations?
A No. No. I just ran into Jim one time, I think in the Legislature. You know, there's lot of legislative meetings that happen, and we got to talking about the election and things like that -- and off campus, obviously, so -- but discussing campaign things.
And so it's going to be brought up and say who are the candidates that might be running, and so then names start popping up here and there, so -- And we're talking like, you know, a hundred people; right? A hundred people that their names pop up.
Q Did you speak with him about whether Nikki Torres would be a good candidate in LD 15?
A Yeah, I think so. I think we discussed that I did like her. I think that she would be a good leader.
Q Did you have any preferences of the names that you gave him? Did you have anyone that you were rooting for in particular?
A Yeah, and it wasn't Nikki.
Q Who was it?
A It was Mike Gonzalez.
Q And why did you want Mike Gonzalez to be the person

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who would fill that role?
A Because I knew Mike. I knew Mike a lot more than I knew Nikki, and I thought he would do a great job.
Q Was the individual you were talking about earlier who ended up running in LD 15 for the representative position, was that Bryan Sandlin?
A It -- Yes. Yes, it's Bryan.
Q And did you have an opinion as to whether Bryan Sandlin should run for the Senator post or if Nikki Torres should run for the Senator post?
A No.
MS. LEEPER: Okay. I think this might be another good opportunity for us to go off the record and take a bit of a break.
THE WITNESS: Okay.
(Break 11:52 a.m. to 12:12 p.m.)
(Discussion off the record.)
MS. LEEPER: All right. Let's go back on the record. Hopefully that wasn't, otherwise we're going to be giving away Fantasy Football information.
Q (By Ms. Leeper) Representative Ybarra, I just have a few more questions for you today. I'm wondering if you have seen a legal claim in this case that was filed in your name in early November.
A A legal claim? Yeah, I think that's what my lawyer

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sent me to get on this interview -- intervention, or whatever we call this thing.
Q Yeah. So I'll explain to you, obviously there's lots of legal jargon here; and so we use these words, like everyone knows what they mean.
So basically a claim is something you file with the court where you make sort of an affirmative argument about something. So not just defending something, but you're actually making an affirmative argument on your own behalf.
A Oh. Yes. Yes, I think so.
Q Have you seen a crossclaim that was filed by your counsel in early November?
A Yes. Yes.
Q Okay. And what's your understanding of that crossclaim?
A That the -- That the -- That the lines that were drawn were drawn for -- were not appropriate, were not -- It was done because they wanted more Hispanics in the 15th, and that was not proper per the laws.
It should be just again, according to the redistricting laws and things like that and everything else, it should be done to where people live and the areas that they are -- Their areas are the same, but what was really -- what I think was done was more that a set of

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redistricting commissioners really wanted a bunch of Hispanics in the 15th, like tons and tons, and they didn't get it. And because they didn't get it, you know, they're -- That's why the lawsuit was there.
But I think that the point of the -- of that is that it shouldn't be done because of -- It shouldn't be done because of race. It should be done because of who the voters are and where they are. It shouldn't be done for race purposes.
Q And what outcome are you hoping will come from that claim?
A Well, the outcome, I just -- I think that the lines are fine. You know, now that I look at them, now that I'm in them, they look fine to me.
So I don't -- I don't want the 15th to be -- Because I think that if they start -- if we -- If the lines change to put more Hispanics in, then I don't -- I think that takes away from, you know, how an election should happen.
I don't want elections to be done because of all the Blacks live in one area, so you're going to, you know, draw the map around Blacks or Whites or Jews or Caucasians or women, or whatever it might be. I think it should be wherever you live, these are the lines; and whoever lives there lives there, and they shouldn't move them around.
Q And so do you want to see the maps stay the way that

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it is right now?
A It would be fine with me, now that I know what the lines are and I've been talking to constituents. I'm okay with them.
I mean, do I want Wanapum -- Do I want Wanapum back? Or not Wanapum, but do I want Mattawa back? Sure. Do I want Lincoln back? Sure. Is that going to happen? Probably not, so --
Q Okay. Were you asked to conduct any searches in connection with requests for information or productions of documents related to this lawsuit?
A Yes.
Q How were you asked to conduct those searches?
A How? I think I was emailed a request to do that.
Q And so not going into sort of the communications that you had with your attorney, but specifically asking how you were asked to conduct the search. So using search terms, or --
A Oh.
Q -- just scrolling through your phone? Like what method were you asked to use?
A Yeah, pretty much what you just mentioned is, you know, do a search for, you know, Paul Graves. Do a search for redistricting, if I see any emails. And then also on my phone, see if there's any texts to particular people

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that might be involved in this situation, see if there's -- yeah, any texts or anything or -- anything that had to do with redistricting or people involved with redistricting, and see if there's any messages that might apply.

As well as I was asked to search for my legislative emails, and so I think that happened. So that happened, both.

Q Did you ever use any messaging platforms, such as like Signal or WhatsApp?

A No, I don't think so. I don't know what those are.

Q Did you ever message over Microsoft Teams or anything like that?

A No.

Q Did you conduct a search of your personal email?

A Yes.

Q Have you deleted any emails or electronic communications that you made or received relating to 2021 redistricting?

A Not that I recall.

Q Have you deleted any text messages or maybe voicemails that you made or received related to 2021 redistricting?

A Not that I recall.

Q Okay. So I'm going to turn to a few documents, and

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I will just go ahead and share my screen very quickly and drop something in the chat. Give me a moment.

All righty. Oh, great.

(Ybarra Exhibit No. 1 introduced and displayed.)

Q All right. Can you see my screen?

A Yes. Kind of small, but I can read it.

Q Okay. Let me zoom in a little bit so it's easier for you. Have you seen this document before? And if you want I can go ahead and scroll down as you ask me to.

A Yes, I think I -- Yes.

Q Okay.

A This is the one where we decide we want to get in as intervenor?

Q No, I'll give you a second to review it so you can look at it and answer the questions.

A Okay. Oh, I've got to wear glasses now, so --

Yeah, I think I've seen them. They all look the same to me, so just with that said.

Oh, maybe not this one, maybe. Oh, I don't -- It doesn't look familiar.

Q Okay. And I'm going to go ahead and show you one more document.

A Okay.

Q And I'll share my screen here as well.

(Ybarra Exhibit No. 2 introduced and displayed.)

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Q And I'll zoom in and scroll down a little, slowly so you can review this as well.

A So can I ask a question?

Q Yeah.

A So I know that there was a request from the plaintiffs, I think, and then we answered the questions.

Q Um-hmm.

A So I received those. If this is one of those, then I did look at those.

Q Okay. And so when did you first see that document, to your recollection?

A When those first questions came in and we were supposed to try to answer them, or -- In September, October, somewhere in there. I don't know. Somewhere in there.

Q And how many sets of questions have you reviewed?

A I'm not sure. I know there was like two sets, I think. I received like two documents that said these are the questions, and then we would review; and then we would help with the answers if need be.

And then I think there was like two documents that came in, maybe three that came in that said here's one set of questions or requests for information; and then the next document would be here's another set, and then I think there was two or three.

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Q And did you review all of the answers before they were sent out, to the best of your recollection?

A Yes.

Q Okay. Who's paying for your legal representation in this case?

A Nobody.

Q So you're not being charged by your attorneys; is that right?

A Correct.

Q Are you aware of if anyone else is paying for your attorneys?

A I have no idea.

Q Okay. I'm going to jump back. Earlier we were talking about some of the specific geographic areas in the Southcentral Washington region, and I was asking about the demographics in those areas. And I just wanted to ask you about a few more cities and your knowledge of the demographics there.

A Okay.

Q So what do you know about the demographics of Toppenish, Washington?

A Oh. Lots of indigenous folks and lots of Hispanics -- lots and lots.

Q And do you know anything in particular about the Latino community there?

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A Sure. They're a lot like my community.
Q And what do you mean by that?
A Lots of Hispanics, lots of farmworkers -- lots and lots of farmworkers. Lots of poverty, so --
Q What do you know about the demographics of Mabton, Washington?
A I'm not that familiar with Mabton, but it's a lot like Toppenish, except much smaller. I'm pretty sure Mabton is just a really small, little town, but mostly Hispanics, I think.
Q And what do you know about the demographics of Wapato?
A A lot like Toppenish, except probably a little less poverty, but there's -- And when I say a little less poverty, it's probably instead of 90 percent poverty in Toppenish, you're 80 percent poverty in that town.
Q Okay.
A But similar demographics, except I think the indigenous folks -- I think there's a lot more indigenous folks in Toppenish than there are in Mabton and Wapato, but I'm not totally sure.
Q Okay. I think I have maybe one more question for you, which is that if the outcome of this lawsuit would result in changes to LD 13 that would result in the reincorporation of Mattawa into LD 13, would you be harmed

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by that change?
A Yeah, to some extent, just because I've been working with the new folks in the new district lines, and there's a lot of work I've been putting in to, you know, try to learn how to support those folks and learn. So all that work will go by the wayside. I can share it with whoever will take over those areas, but -- You know, I've been doing a lot of work over there trying to, you know, understand what their issues are.
So yeah, I'll be harmed.
Q Would you view --
A Not a lot, but, you know, --
Q Would you view the reincorporation of Mattawa into LD 13 as a net positive or a net negative?
A You know, I'd have to -- I haven't again been down there since redistricting as much as I was before, so I don't know what -- if there are additional issues that they may have down there; but I think it --
I think I would do -- Because I'm closer to them and they're in my geographic area, I think it would be a positive, in my opinion, because I've been working with those folks. So I think it would be a positive.
MS. LEEPER: Okay. That is all the questions that -- Actually, I'm just going to take a second. Let's take a quick five-minute -- or actually

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like a three-minute break, and come back at 12:30 so I can review my notes; and then I think I should be letting you go, but I want to take a second.
THE WITNESS: Sure.
MS. LEEPER: See you in a moment.
(Break 12:27 p.m. to 12:31 p.m.)
(Discussion off the record.)
MS. LEEPER: Okay. Let's hop back on the record.
Q (By Ms. Leeper) Representative Ybarra, thank you for your time today. Just one or two more quick questions for you.
During the breaks of the deposition today did you speak with anyone?
A Yeah, in the breakout room.
Q And when you say the breakout room -- and I'm not asking about the content of the conversation, but did you speak with your attorney during our breaks today?
A Yes.
Q Okay. And anyone else?
A No.
MS. LEEPER: Okay. That is all from me. Thank you again, Representative Ybarra, for your time today. We really appreciate it.
Now the State has an opportunity if they want to ask

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any questions of you, and I'll leave it to them.
THE WITNESS: And before you go farther, so when you say the State, the Attorney General's Office; is that who that is?
MS. LEEPER: Yes. That is Andrew Hughes.
THE WITNESS: Okay.
MS. LEEPER: Yes.
THE WITNESS: Okay.
EXAMINATION
BY MR. HUGHES:
Q Good afternoon, Representative Ybarra. My name is Andrew Hughes. I'm an Assistant Attorney General in the State Attorney General's Office.
How are you doing?
A Good. Just saw your boss yesterday and the day before.
Q Oh, yeah? How is he doing?
A Good. Good. We were up at Suncadia.
Q Oh, nice. Nice. He must have forgotten to invite me.
MR. STOKESBARY: I think I got neglected to be invited to that as well, actually.
MR. HUGHES: We're not gonna get on that list.
Q (By Mr. Hughes) Representative Ybarra, before the

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redistricting plan became official the Legislature had to vote on it; correct?
A Yes. I think to make it official.
Q And you voted in favor of the plan; correct?
A Yes.
Q And can I assume that you stand by that vote?
A Yes.
Q So do you understand the map that you voted on to be an illegal racial gerrymander?
A No.
MR. HUGHES: Okay. That's all I have. Thank you very much.
THE WITNESS: Okay.
MR. STOKESBARY: And then Andrew, if you're done -- Oh, Kate. Well, it's not my place to ask her, but if Kate doesn't have any questions from the Secretary of State's office, then I just had about two questions for Alex.
Oh, she says in the chat, "None from me."
EXAMINATION
BY MR. STOKESBARY:
Q So Alex, I just want to ask you two quick and related questions.
You know, obviously we've talked about how you represent the 13th Legislative District. A number of your

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constituents are Hispanic or Latino.
Do you believe that you are responsive to the needs of your Hispanic and Latino constituents?
A The answer is yes. I -- Everybody in my constituency, in my district, if they send me an email, the day they send it I send them a response. And sometimes the response is, "I'll get back to you" because I don't know the answer.
But every single constituent that I have in my district always gets a response -- no matter the color, no matter the surname.
Q And then you've been in the Legislature for four or five years now, so you've had a chance to work with your colleagues in the House and Senate who represent other districts in Southcentral Washington, like the 13th, 14th, 15th and 8th Districts.
From your experience do you think that those representatives and senators are responsive to the needs of the Hispanic and Latino constituents that they represent?
MS. LEEPER: I'm just going to object that this calls for speculation.
Q (By Mr. Stokesbary) Based on what you've observed, Alex, --
MS. LEEPER: You can go ahead and answer.

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Q (By Mr. Stokesbary) Alex, based on what you've observed, would you characterize your colleagues in Southcentral Washington as being responsive to the needs of Hispanics and Latinos in the areas they represent?
A Yes, and they probably respond with more vigor than I do. They are usually the ones that if there's something they don't understand from a Hispanic standpoint, they sometimes ask me about certain things. And they're very --
They really care about the Hispanic community, and they are very responsive, because I hear from them when they ask me questions about certain things that are happening that they may not understand because they're not Hispanic.
MR. HUGHES: I didn't want to cut off the witness there, but I did want to add a foundation objection.
MR. STOKESBARY: Okay.
That's all I've got for you, Alex.
THE WITNESS: Okay. Was I supposed to respond to Andrew? I'm not sure what --
MR. STOKESBARY: No, that's -- It's okay.
THE WITNESS: Okay.
(Deposition concluded at 12:39 p.m.)
(Signature reserved.)

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CERTIFICATE
STATE OF WASHINGTON)
) SS
County of King)
I, the undersigned Washington Certified Court Reporter, pursuant to RCW 5.28.010 authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify:
That the annexed and foregoing deposition of the witness named herein was taken stenographically before me and reduced to typewritten form under my direction.
I further certify that the witness examined will be given an opportunity to review and sign their deposition after the same is transcribed, unless indicated in the record that the parties and witness waived the signing.
I further certify that all objections made at the time of said examination to my qualifications or the manner of taking the deposition or to the conduct of any party have been noted by me upon the deposition.
I further certify that I am not a relative or an employee or attorney or counsel of any of the parties to said action, or a relative or employee of any such attorney or counsel, and that I am not financially interested in the said action or the outcome thereof.
I further certify that the witness before examination was by me duly sworn to testify the truth, the whole truth, and nothing but the truth.
I further certify that the deposition, as transcribed, is a full, true and correct transcript of the testimony, including questions and answers and all objections, motions and exceptions of counsel made and taken at the time of the foregoing examination and was prepared pursuant to Washington Administrative Code 308-14-135, the transcript preparation format guideline.
IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of December, 2022.
Jeanne M. Gersten, RDR, CCR
Registered Diplomate Reporter
Washington CCR No. 2711
License effective until April 2, 2023
Residing at Seattle, Washington

Electronically signed by Jeanne Gersten (001-357-668-4110) 16ae59c8-d1c2-442c-ade8-bdc0dc4e7aa7

CHANGE/SIGNATURE SHEET

I, the undersigned, ALEX YBARRA, hereby certify that I have read the foregoing deposition and that, to the best of my knowledge, said deposition is true and accurate, with the exception of the following corrections listed below:

PAGE	LINE	CHANGE	REASON

_____ _____

Signature Date

Witness: Alex Ybarra
Soto Palmer, et al. v. Hobbs, et al.
USDC Western District of Washington at Seattle
Cause No. 3:22-cv-05035-RSL
Date: December 5, 2022
Reported by: Jeanne M. Gersten, RDR, CCR No. 2711
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN SOTO PALMER, *et. al*.,

Plaintiffs,

v.

STEVEN HOBBS, *et. al*.,

Defendants,

and

JOSE TREVINO, *et al*.,

Intervenor-Defendants.

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

ORDER STRIKING ERRATA

This matter comes before the Court on the "State of Washington's Motion to Strike Notice of Errata Corrections for Deposition of Benancio Garcia III." Dkt. # 164. The errata sheet (Dkt. # 162-1) was timely filed and in the form specified by Federal Rule of Civil Procedure 30(e), but the changes fundamentally altered the substance of deposition testimony that was material to the State's then-pending request that the Court conduct a conflicts inquiry. As an explanation for making each of the thirty changes, Mr. Garcia states:

> Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.

Dkt. # 162-1 at 4-10. Intervenor-Defendants do not assert that the court reporter incorrectly transcribed the witness' testimony as it was provided at the deposition, and all of the changes, if

accepted, improved the Intervenor-Defendants' chances of avoiding a finding of conflict. The State of Washington requests that the errata sheet be stricken as improper.

Rule 30(e)(1) provides that, upon request at the deposition, the deponent has thirty days after the deposition transcript becomes available to review the transcript and "if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them." Fed. R. Civ. Proc. 30(e)(1)(B). "While the language of [Rule] 30(e) permits corrections 'in form or substance,' this permission does not include changes offered solely to create a material factual dispute in a tactical attempt to evade an unfavorable summary judgment." *Hambleton Bros. Lumber Co. v. Balkin Enters.*, 397 F.3d 1217, 1225 (9th Cir. 2005). Intervenor-Defendants argue that errata are improper only if offered to avoid summary judgment. But *Hambleton* makes clear that "Rule 30(e) should be used for corrective, not contradictory, changes." *Id.* at 1226. The relevant inquiry for the Court is "whether the alterations have a legitimate purpose" or are instead offered to rewrite testimony that was previously given under oath. *Hambleton*, 397 F.3d at 1224-26. *See also Garcia v. Pueblo Country Club*, 299 F.3d 1233, 1242 n.5 (10th Cir. 2002) ("The Rule cannot be interpreted to allow one to alter what was said under oath. If that were the case, one could merely answer the questions with no thought at all then return home and plan artful responses. Depositions differ from interrogatories in that regard. A deposition is not a take home examination."); *Thorn v. Sundstrand Aerospace Corp.*, 207 F.3d 383, 389 (7th Cir. 2000) ("We also believe, by analogy to the cases which hold that a subsequent affidavit may not be used to contradict the witness's deposition, that a change of substance which actually contradicts the transcript is impermissible unless it can plausibly be represented as a correction of an error in transcription, such as dropping a 'not.'"); *Campagnolo S.r.l.*, 2010 WL 11527379, at *2 ("[A]

change of substance which actually contradicts the transcript is impermissible unless it can plausibly be represented as the correction of an error in transcription.").

> Because the sham affidavit rule must be applied with caution, the Court must make two findings before striking an errata. *Van Asdale v. Int'l Game Tech.*, 577 F.3d 989, 998 (9th Cir. 2009). First, the Court must find that the errata is a sham. *Yeager v. Bowlin*, 693 F.3d 1076, 1080 (9th Cir. 2012). "In determining whether a deposition errata constitutes a sham, courts consider circumstances including the number of corrections, whether the corrections fundamentally change the prior testimony, the impact of the corrections on the cases (including whether they pertain to dispositive issues), the timing of the submission of corrections, and the witness's qualifications to testify." *Karpenski v. Am. Gen. Life Companies, LLC*, 999 F. Supp. 2d 1218, 1224 (W.D. Wash. 2014). Second, the "inconsistency between a party's deposition testimony and subsequent affidavit must be clear and unambiguous." *Yeager*, 693 F.3d at 1080 (quoting *Van Asdale*, 577 F.3d at 998–99). The Court should strike errata as shams sparingly, "because it is in tension with the principle that the court is not to make credibility determinations when granting or denying summary judgment." *Id.* The Ninth Circuit has specifically "caution[ed] that newly-remembered facts, or new facts, accompanied by a reasonable explanation, should not ordinarily lead to the striking of a declaration as a sham." *Id.* at 1081.

Paunovic v. OBI Seafoods LLC, No. C21-884 MJP, 2023 WL 1864211, at *3 (W.D. Wash. Feb. 9, 2023), reconsideration denied, No. C21-884 MJP, 2023 WL 2428403 (W.D. Wash. Mar. 9, 2023).

Each and every circumstance suggests that the corrections offered by Mr. Garcia constitute a sham. There were thirty corrections, all of which were substantive. The corrections were targeted at testimony the State of Washington had relied upon when requesting a conflicts inquiry and were offered while that motion was still pending. None of the corrections sought to correct a transcription error, and many of them involved testimony regarding events that were fairly recent and squarely within Mr. Garcia's personal knowledge.

With regards to the second necessary finding, Mr. Garcia's corrections are clearly and unambiguously inconsistent with the testimony he provided under oath. Indeed, the transcript "reflect[s] clear and consistent answers and fail[s] to manifest any confusion that could have merited post-deposition correction." *Karpenski*, 999 F. Supp. 2d at 1225. The very first correction, for example, changes Mr. Garcia's response to the question, "what did you do to prepare today for this deposition?" from "I didn't prepare for this deposition" to "I met with my attorneys for a few hours." *Compare* Dkt. # 156-1 at 5 *with* Dkt. # 162-1 at 4. Follow up questions suggested that the only communications Mr. Garcia had with his attorneys after the filing of the complaint were an email received approximately six months before the deposition and a telephone call shortly before the deposition when Mr. Garcia reached out to counsel to discuss the subpoena that had been served on him. Dkt. # 156-1 at 27-28. Mr. Garcia also seeks to correct lengthy testimony regarding counsel's plan to dismiss his claims in *Garcia v. Hobbs*, C22-5152-RSL-DGE-LJCV, if the Intervenor-Defendants were permitted to add the same claim in this litigation. Testimony that he would "never agree to not be part – I agreed that I would finish this all the way through to --" is changed to "I agreed that if the claim proceeded in the *Palmer* litigation [then] I was still seeing this through." *Compare* Dkt. # 165-1 at 15 *with* Dkt. # 162-1 at 6. A "yes" in response to the question, "[s]o this representation was made without your authorization then?" was changed to "no." *Id*. His testimony that:

> I wasn't aware until it was brought up to me today that if the case were to move forward, that the intervening defendants – or intervening Jose, Alex, and Mr. Campos would be the ones moving forward on the case and I would be withdrawn from the case. Is that correct? . . . I got to be honest. I made it clear that, if I started this, I was going to finish to the end, and I am not pleased.

was changed to:

> I was aware what the Palmer Intervenor Defendants were asking the Court to do, and that [] the intervening defendants -- or intervening Jose, Alex, and Mr. Campos would be the ones moving forward on the case and I would be withdrawn from the case. . . . While my preference is to finish this litigation, in the end, I am okay so long as we eventually prevail with my claim in whatever case.

Compare Dkt. # 156-1 at 17 with Dkt. # 162-1 at 7.

Despite the Court's general reluctance to strike errata as shams, where the corrective mechanism provided in Rule 30(e) is used to fundamentally and materially alter sworn testimony to gain a tactical advantage in the litigation with no reasonable explanation for the alterations, the errata is improper. The fact that the Court has since resolved the request for a conflicts inquiry does not mandate that sham facts and assertions remain in the record: if the altered deposition transcript were to be used at trial, the other parties would be forced to expend time and energy showing how the revisions came about and why they are a sham. If Mr. Garcia's deposition testimony is presented at trial for any reason, the burden should be on him to explain that the testimony – as properly recorded by the court reporter -- was not accurate and should be disregarded in favor of his subsequent assertions.

For all of the foregoing reasons, the errata (Dkt. # 162-1) is hereby STRICKEN.

Dated this 20th day of April, 2023.

Robert S. Lasnik
United States District Judge

Exhibit A

BUELL REALTIME REPORTING | COURT REPORTING AND LEGAL VIDEO

E R R A T A

CASE NAME: Garcia III v. Hobbs, et ano. / Palmer v. Hobbs, et al.

DATE TAKEN: 2/3/2023

WITNESS: Benancio Garcia III

CORRECTIONS

Page	Line	Now Reads	Should Read	Reason(s) for Change(s)
____	____	***See Attachment A***	_____	_____
____	____	_____	_____	_____
____	____	_____	_____	_____
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_____
Signature of Deponent

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708 Market Street, Suite 408 Tacoma, Washington 98402
Seattle 206.287.9066 Tacoma 253.235.0111
e-mail production@buellrealtime.com www.buellrealtime.com

BUELL REALTIME REPORTING COURT REPORTING AND LEGAL VIDEO

D E C L A R A T I O N

CASE NAME: Garcia III v. Hobbs, et ano. / Palmer v. Hobbs, et al.

DATE TAKEN: 2/3/2023

WITNESS: Benancio Garcia III

I declare under penalty of perjury under the laws of the State of Washington that I have read my within deposition, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the ERRATA flyleaf page hereof.

DocuSigned by:
DE2C1E8043AF480...
Benancio Garcia III

Signed on the 6th day of March, 2023.

Attachment A

Deposition Errata Sheet

Page:Line	Now Reads	Should Read	Reason(s) for Change(s)
9:17	I didn't prepare for this deposition.	I met with my attorneys for a few hours.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
10:5	Yes. The attorney that's right here that I'm using the office for because we were both confused.	Yes. The attorney that's right here that I'm using the office for because we were both confused. I also spoke with Dallin Holt, another one of my attorneys.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
20:4	I saw a copy, yes, I did, of my Complaint, but not of the one that we're doing the deposition on.	No.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
20:15	That's -- that's why I'm confused, when I'm talking my Complaint, I know what my Complaint is, but I have not seen anyone else's Complaint. I'm sorry.	That's -- that's why I'm confused, when I'm talking my Complaint, I know what my Complaint is, but I have also seen the Complaint in the Palmer litigation. I'm sorry.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my

			misstatements for the record.
45:17	No.	Yes. A basic understanding.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
46:2	I'm aware in the sense that I was served the paperwork, but I -- I didn't look into -- I mean, I -- all I looked at basically is where I had to be, and the time of the deposition was going to be. I didn't look into anything more than that.	Yes. I have seen some pleadings in the Palmer litigation and am aware that they intervened.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
46:10	That's correct.	No. I became aware of the Palmer litigation in the Spring of last year.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
47:12	No.	Yes.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
47:16	No. I brought this lawsuit on the fact that -- that I believe that there was racial gerrymandering occurring,	Yes. While I brought this lawsuit on the fact that -- that I believe that there was racial gerrymandering occurring, and	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had

	and that I would see this all the way through.	that I would see this all the way through. I was okay if the racial gerrymandering claim continued in the Palmer litigation.	misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
47:22	As important as it was for me to run for U.S. Congress because I believe I will do what is the best interests of 4th District. It's as important to me that when I signed on to this lawsuit, that I would see to the end what would occur. There's no wavering on my completion of this.	As important as it was for me to run for U.S. Congress because I believe I will do what is the best interests of 4th District. It's as important to me that when I signed on to this lawsuit, that I would see to the end what would occur. However, it is more important to me that we win the claim, and if that happened in the Palmer litigation, I am okay with that.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
50:13	I will never agree to not be part -- I agreed that I would finish this all the way through to --	I agreed that if the claim proceeded in the Palmer litigation than I was still seeing this through.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
50:17	Yes.	No.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
59:23	Yes. That's also news to me.	No. I knew my attorneys also represented the Palmer Intervenor Defendants since the Spring of last year.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my

			misstatements for the record.
60:4	I wasn't aware until it was brought up to me today that if the case were to move forward, that the intervening defendants -- or intervening Jose, Alex, and Mr. Campos would be the ones moving forward on the case and I would be withdrawn from the case. Is that correct?	Yes. I was aware what the Palmer Intervenor Defendants were asking the Court to do, and that that the intervening defendants -- or intervening Jose, Alex, and Mr. Campos would be the ones moving forward on the case and I would be withdrawn from the case.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
60:13	I got to be honest. I made it clear that, if I started this, I was going to finish to the end, and I am not pleased.	While my preference is to finish this litigation, in the end, I am okay so long as we eventually prevail with my claim in whatever case.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
60:18	Absolutely correct.	My preference is to finish this litigation, but if it is better that it be finished in the Plamer case then I am okay with that.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
61:12	Yes.	No.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
61:14	Yes, I do.	No, I don't.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had

			misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
61:16	There are conflicting reasons why the Complaint was filed on initially why I filed it and to know that, if this case were to be moved forward, the intervening witnesses, or defendants, however you want to -- plaintiffs, would go ahead and see the Complaint in a different light, opposite to what was initially filed, and that I would not see this to fruition, to completion of adjudication.	As I said, I don't see a problem with it.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
62:2	Uh-huh	No.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
62:6	That's correct.	No. That is not correct. I do not believe that the Palmer Intervenors interests' are opposite mine. As I understand it we both want race-neutral districts.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
62:10	That is correct, and our legal representation agreement.	That is correct, and our legal representation agreement. And I believe they are representing my point of view.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my

			misstatements for the record.
67:3	Yes.	No.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
96:17	No.	No. I don't believe there are any conflicts that I need to waive.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
98:7	Yeah.	No. I had several phone calls with Drew in the spring and summer of last year.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
104:7	Prior to that, I believe there was a letter -- I believe there was an email sent, but --	Prior to that, I believe there were multiple emails sent.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
104:10	Maybe six months ago, maybe five months, six months.	Drew emails me or calls me with updates. He called and emailed me several times in the spring and summer. When there	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had

		is an update on the case that I should know, he sends me an update.	misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
104:14	No.	I can't remember exactly, but Drew has kept me informed.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
106:2	No.	I was told before, but I know it has changed a few times.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.
106:4	No.	I was told when trial was—a few different times.	Following my deposition, I reviewed the transcript and my communications with counsel. I realized I had misremembered many things, and now that my memory has been refreshed, I wanted to correct my misstatements for the record.

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.

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

ORDER

At the hearing scheduled for March 7, 2023, the parties shall be prepared to respond to the Court's inquiries regarding the existence of potential and actual conflicts in this case and to discuss appropriate remedies if the Court finds that a conflict exists.

Dated this 3rd day of March, 2023.

Robert S. Lasnik
United States District Judge

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

Intervenor-Defendants.

NO. 3:22-cv-5035-RSL

DEFENDANT STATE OF WASHINGTON'S MOTION FOR INQUIRY CONCERNING POTENTIAL CONFLICTS OF INTEREST

NOTE FOR MOTION CALENDAR: MARCH 3, 2023

I. INTRODUCTION[1]

The State of Washington respectfully requests that the Courts in both *Soto Palmer v. Hobbs*, No. 3:22-cv-5035-RSL, and *Garcia v. Hobbs*, No. 3:22-cv-05152-RSL-DGE-LJCV, conduct an inquiry into potential conflicts of interest that could affect the ability of counsel for Plaintiff Benancio Garcia and Intervenor-Defendants Ismael Campos, Jose Trevino, and Alex

[1] This identical motion is being filed concurrently in both *Soto Palmer v. Hobbs* and *Garcia v. Hobbs*.

Ybarra (the *Soto Palmer* Intervenors) to represent them in these cases. Mr. Garcia and the *Soto Palmer* Intervenors are represented by the same counsel—Andrew Stokesbary and attorneys with the law firm of Holtzman Vogel—and recent deposition testimony appears to confirm a conflict between Mr. Garcia and the *Soto Palmer* Intervenors that either cannot be waived or, at a minimum, has not been waived with informed consent.

Counsel for the State are filing this motion because it has an interest and an obligation to ensure it represents its client, the State of Washington, competently (RPC 1.1) and diligently (RPC 1.3). Those duties include raising potential conflicts with the Court as they arise and involving the Court in the process of addressing a potential conflict before it undermines a proceeding or confidence in the effective administration of justice. *Cf. Manhalt v. Reed*, 847 F.2d 576, 583-84 (9th Cir. 1988) (observing, after concluding that the defendant's lawyer's conflict of interest adversely affected his lawyer's performance, that prosecutors "had an ample opportunity to bring the potential conflict to the trial judge's attention and move for disqualification if appropriate").

The State does not take a position on whether disqualification is necessary or appropriate here. But in light of the potential conflict, the State requests that the respective Courts exercise their "inherent power to protect the integrity of their processes," *FMC Techs., Inc. v. Edwards*, 420 F. Supp. 2d 1153, 1156 (W.D. Wash. 2006) (cleaned up), and conduct an inquiry to determine whether counsel must be disqualified from representing Mr. Garcia and/or the *Soto Palmer* Intervenors.

II. BACKGROUND

A. The *Soto Palmer* and *Garcia* Lawsuits and the Potential for Conflict

The potential conflict of interest arises from two cases in which Mr. Garcia and the *Soto Palmer* Intervenors appear to take opposing positions. In *Garcia v. Hobbs*, Mr. Garcia challenges the constitutionality of Legislative District 15, as enacted in the 2021 redistricting cycle, as an illegal racial gerrymander. *Garcia*, Case No. 3:22-cv-5152-RSL, Dkt. #14 at 1. Among other

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remedies, Mr. Garcia requests injunctive relief barring Secretary Hobbs and the State from giving effect to the enacted boundaries of Legislative District 15 and ordering the creation of a revised Legislative District map. *Id*. at 18. In contrast, in *Soto Palmer v. Hobbs*, the *Soto Palmer* Intervenors ask the Court to dismiss the plaintiffs' Voting Rights Act challenge to Legislative District 15, which would have the effect of maintaining Legislative District 15 as enacted. *Soto Palmer*, No. 3:22-cv-5035-RSL (*Soto Palme*r), Dkt. #77 at 32.

Mr. Stokesbary represents both Mr. Garcia and the *Soto Palmer* Intervenors. *Garcia* Dkt. #14; *Soto Palmer* Dkt. #77. Attorneys from the law firm Holtzman Vogel Baran Torchinsky & Josefiak PLLC have appeared in *Soto Palmer* on behalf of *Soto Palmer* Intervenors. *See Soto Palmer* Dkts. ##86, 88, 90, 96, & 119. Holtzman Vogel attorneys have not appeared in the *Garcia* matter, but on February 2, 2023, Phil Gordon of Holtzman Vogel informed the State that Holtzman Vogel was also representing Mr. Garcia and that a motion for admission *pro hac vice* in that matter would be forthcoming. Declaration of Andrew Hughes (Hughes Decl.), Ex. 1. Mr. Garcia has confirmed this representation. *Id.*, Ex. 2 at 57:14-59:11.

The issue of a potential conflict was previously brought to the attention of the *Soto Palmer* Court when *Soto Palmer* Intervenors first sought to intervene in this litigation. In opposing intervention, *Soto Palmer* Plaintiffs pointed out that Mr. Stokesbary's representation of Mr. Garcia, "a party seeking to *challenge* LD 15[,] and [Intervenors'] apparent desire here to *defend* it at least raises questions as to whether their participation as intervenors is appropriate." *Soto Palmer*, Dkt. #64 at 12. In response, *Soto Palmer* Intervenors' Counsel argued that "while Intervenors share counsel with the plaintiff in *Garcia v. Hobbs*, No. 3:22-cv-5152 (W.D. Wash. filed March 15, 2022) (challenging Legislative District 15 under the Fourteenth Amendment), there is no conflict to argue that a district is an unconstitutional racial gerrymander under the Equal Protection Clause but is not also covered by section 2 of the VRA." *Soto Palmer*, Dkt. #67 at 7. In that early posture, the *Soto Palmer* Court concluded that "[a]t present," it did "not perceive an insurmountable conflict between the claims set forth in *Garcia v. Hobbs*, C22-

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5152RSL, and intervenors' opposition to plaintiffs' Section 2 claim." *Soto Palmer*, Dkt. #69 at 9 But the Court continued: "If it turns out that counsel's representation gives rise to a conflict under the Rules of Professional Conduct . . . , those issues can be heard and determined through motions practice as the case proceeds." *Id.* at 9-10.

Recent discovery, including the February 3, 2023, deposition of Mr. Garcia, appears to confirm the *Soto Palmer* Plaintiffs' concerns about an insurmountable conflict of interest.

B. The Potential Conflict Emerges

The potential conflict came into sharper focus when two of *Soto Palmer* Intervenors, Jose Trevino and Alex Ybarra (*Soto Palmer* Intervenor-Plaintiffs), sought to amend their Answer to include a crossclaim for declaratory and injunctive relief identical to Mr. Garcia's claim attacking the constitutionality of Legislative District 15 as an illegal racial gerrymander. *Soto Palmer*, Dkt. #103. In a subsequent court filing, Mr. Stokesbary, as counsel for both *Soto Palmer* Intervenors and Mr. Garcia, represented to the Court that Mr. Garcia would dismiss his action should the Court permit the crossclaim in the *Soto Palmer* matter to proceed. *Soto Palmer*, Dkt. #109 at 2. As detailed below, Mr. Stokesbary appears to have failed to seek authority from his client before making that representation to the Court, and this representation was in fact contrary to the directional wishes of Mr. Garcia as to how his case should proceed.

Although Mr. Trevino and Mr. Ybarra had sought to add a crossclaim challenging the constitutionality of Legislative District 15 and had requested injunctive relief barring the enforcement of Legislative District 15 and requiring the creation of a new map, both litigants later testified that they were satisfied with Legislative District 15 as enacted and had no desire to modify the enacted boundaries. *Soto Palmer*, Dkt. #127 at 1-2; Dkt. #127-1 at 111:10-12; Dkt. #127-2 at 21:1-11.

The Court denied the *Soto Palmer* Intervenor-Plaintiffs' request to amend their answer to add a crossclaim for declaratory and injunctive relief. Dkt. #136.

C. Mr. Garcia's Deposition Appears to Confirm a Conflict of Interest

Troubling testimony pointing to potential conflicts came to light during Mr. Garcia's February 3, 2023 deposition. Mr. Garcia testified that he had been unaware of the *Soto Palmer* litigation prior to receiving a copy of a subpoena the previous week. Hughes Decl., Ex. 2 at 46:7-10. He further testified that he had never agreed to dismiss his lawsuit if the *Soto Palmer* Intervenor-Plaintiffs had been allowed to bring their racial gerrymandering claim in that lawsuit, nor had he authorized Mr. Stokesbary to represent to the Court that he had agreed to do so. *Id*. at 47:8-12 & 50:2-17. He testified that he was "not pleased" that Mr. Stokesbary had made this representation to the Court on his behalf and was also displeased to be hearing about it for the first time at his deposition. *Id*. at 60:4-18.

Mr. Garcia also testified that prior to his deposition, he had been unaware that his attorneys also represented the *Soto Palmer* Intervenors, who wanted Legislative District 15 to remain unchanged. *Id* at 59:12-61:1. He testified that he found it problematic that his counsel was representing clients with positions that conflicted with his. *Id*. at 61:7-14. He also testified that he had never signed a conflict waiver. *Id*. at 96:15-17.

Mr. Garcia also stated that prior to his deposition, he had not been aware that Mr. Stokesbary served in the Washington State Legislature and had voted in favor of the enacted Legislative District 15. *Id.* at 65:18-25. He testified that he found this revelation upsetting as well. *Id*. at 65:18-66:7. When asked whether he was concerned about what he had learned in the deposition with respect to his counsel, he answered in the affirmative. *Id.* at 66:20-67:3.

Mr. Garcia also testified to a lack of communication with his counsel. Specifically, he testified that he did not receive copies of his subpoenas from counsel and instead, first learned of the subpoenas' existence when a process server came to his house a week and a half after they had been served on his counsel. *Id.* at 88:13-25; Hughes Decl., Ex 3. He further testified that after filing his Complaint in spring of 2022, he did not speak with Mr. Stokesbary again until the last week of January 2023, when he reached out to Mr. Stokesbary to discuss the subpoenas he

had just received. Hughes Decl., Ex. 2 at 98:4-16. The only other communication with his counsel that he could recall was a letter he had received five or six months before the deposition. *Id*. at 104:5-14. Mr. Garcia also testified that he did not know that he had an expert, had not reviewed the expert's report, and did not know about the approaching trial date in his case. *Id*. at 105:5-106:4.

Mr. Garcia further testified that while he was aware that a third party was funding his lawsuit, he did not know the identity of the third party. *Id*. at 103:6-13.

III. ARGUMENT

A. Legal Standard

"The primary responsibility for controlling the conduct of lawyers practicing before the district court rests with that court." *Trone v. Smith*, 621 F.2d 994, 999 (9th Cir.1980). Thus, "this Court has a duty to examine charges of conflict of interest." *FMC Techs.*, 420 F. Supp. 2d at 1157 (citing *U.S. for Use & Benefit of Lord Elec. Co., Inc. v. Titan Pac. Const. Corp.*, 637 F. Supp. 1556, 1562 (W.D. Wash. 1986)).

To determine whether a lawyer's representation violated his or her ethical duties, "the Court first refers to the local rules regulating the conduct of members of its bar." *Lord Elec. Co.*, 637 F. Supp. at 1560. Lawyers appearing in the Western District of Washington must be familiar with and comply with the Washington Rules of Professional Conduct "[i]n order to maintain the effective administration of justice and the integrity of the [C]ourt." LCR 83.3(a); *see In re Cellcyte Genetic Corp. Sec. Litig.*, No. C08-47RSL, 2008 WL 5000156, at *2 (W.D. Wash. Nov. 20, 2008).

"[C]ourts must consider the overarching question of whether a violation of such rules will undermine, or seriously threaten to undermine, the integrity of judicial proceedings." *M.O. by C.O. v. Fairfax Cnty. Sch. Bd.*, No. 121CV00769RDAJFA, 2022 WL 264456, at *2 (E.D. Va. Jan. 27, 2022) (cleaned up).

B. Potential Conflicts of Interest Under RPC 1.7

Washington Rule of Professional Conduct 1.7, governing conflicts of interest with current clients, provides:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> (1) the representation of one client will be directly adverse to another client; or
>
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
>
> (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
>
> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
>
> (2) the representation is not prohibited by law;
>
> (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
>
> (4) each affected client gives informed consent, confirmed in writing (following authorization from the other client to make any required disclosures).

Paragraph (b)(3) of RPC 1.7 strictly "prohibits representation of opposing parties in the same litigation, regardless of the clients' consent." RPC 1.7, Cmt. 23. "On the other hand, simultaneous representation of parties whose interests in litigation *may* conflict . . . is governed by paragraph (a)(2)." *Id.* (emphasis added). "A conflict may exist by reason of substantial discrepancy in the parties' testimony [or] incompatibility in positions in relation to an opposing party[.]" *Id.*

Where a conflict exists and there is no *per se* bar to waiving it, the Court must determine whether a "lawyer reasonably believes that [they] will be able to provide competent and diligent representation to each affected client." This analysis includes both objective and subjective components. *In re Cellcyte*, 2008 WL 5000156, at *2 (citing RPC 1.0(h) & (i)RPC 1.0(h) & (i)).

If, and only if, a conflict is waivable, "each affected client" must "give[] informed consent." RPC 1.7(b)(4). "Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client." RPC 1.7, Cmt. 18. "When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved." *Id.*

"In resolving motions to disqualify based on a lawyer's conflict of interest, courts in this district typically place the burden on the firm whose disqualification is sought to show that no conflict exists." *United States Fire Ins. Co. v. Icicle Seafoods, Inc.*, 523 F. Supp. 3d 1262, 1268-69 (W.D. Wash. 2021).

Mr. Stokesbary's and Holtzman Vogel's simultaneous representation of clients with conflicting objectives appears to present a conflict of interest. Specifically, while Mr. Garcia has asked the Court to invalidate the current Legislative District map, *Garcia*, Dkt. #14 at 18, Mr. Trevino and Mr. Ybarra have expressed a desire to keep the current map in place. *Soto Palmer* Dkt. #127 at 1-2.

Given the patent adversity between Mr. Garcia and the *Soto Palmer* Intervenor-Plaintiffs in directly related matters, RPC 1.7(b)(3) may constitute a *per se* bar to counsel's simultaneous representation of parties in both suits. *See* RPC 1.7, Cmt. 23 (explaining that paragraph (b)(3) of RPC 1.7 strictly "prohibits representation of opposing parties in the same litigation, regardless of the clients' consent.").

Even if RPC 1.7(b)(3) does not categorically bar simultaneous representation here, it appears that the conflict may be unwaivable under RPC 1.7(b)(1), which permits concurrent representation only where "the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client." It is difficult to imagine how counsel could vigorously pursue Mr. Garcia's interest in *striking down* the maps as an illegal

racial gerrymander, *Garcia*, Dkt. #14 at 18, while simultaneously pursuing Mr. Trevino and Mr. Ybarra's interest in *preserving* the maps that both have testified they do not believe are racial gerrymanders. *Soto Palmer*, Dkt. #127 at 1-2. As this Court has previously explained, an unwaivable conflict exists where counsel has "an obvious temptation . . . to 'soft pedal'" its representation of "its own clients to further the interest of other clients, or its own interest in continuing the multiple representation." *In re Cellcyte,*, 2008 WL 5000156, at *3. And [t]he conflict is even more apparent" in a case like this "because the matters are related." *Id.*

However, even if the conflict here were waivable, Mr. Garcia's deposition testimony makes clear that there was no informed consent to any waiver. Indeed, Mr. Garcia did not learn *until his deposition* that the *Soto Palmer* litigation even existed, let alone that his attorneys were representing parties with conflicting interests and objectives. Hughes Decl., Ex. 2 at 46:7-10; 59:12-61:1. He further testified that he never signed a conflict waiver. *Id.* at 96:15-17. Likewise, nothing in the record indicates that the *Soto Palmer* Intervenors consented to their counsel's simultaneous representation of Mr. Garcia.

Accordingly, the State respectfully requests that the Courts in each of these related matters conduct an inquiry to determine whether Mr. Stokesbary's and Holtzman Vogel's concurrent representation of Mr. Garcia and the *Soto Palmer* Intervenors presents a waivable conflict and if so, whether each affected client provided the requisite informed consent to this representation.

C. Potential Conflict Regarding Undisclosed Third-Party Payments Under RPC 1.8

The State respectfully moves the Court to additionally conduct an inquiry to assure itself that counsel for Mr. Garcia and the *Soto Palmer* Intervenors are in compliance with RPC 1.8(f).

RPC 1.8(f) provides that "[a] lawyer shall not accept compensation for representing a client from one other than the client" unless the following three conditions are met:

> (1) the client gives informed consent;
>
> (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
>
> (3) information relating to representation of a client is protected as required by Rule 1.6.

Comment 11 to the Rule acknowledges that "[l]awyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer[.]" But because "third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing," lawyers must not accept or continue representation "unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client." RPC 1.8, Cmt. 11.

During Mr. Garcia's deposition, he was directly asked about the fee arrangement in his case. Mr. Garcia testified that he himself was not paying attorney fees and believed that another entity is, though he could not testify who. Hughes Decl., Ex. 2 at 103:6-104:23. This line of testimony highlights a potential violation of RPC 1.8, which requires counsel for Mr. Garcia to obtain their client's informed consent if third parties are paying their fees.

Concerns about potential violations of RPC 1.8 also exist in *Soto Palmer*. For example, at the deposition of Intervenor-Defendant Alex Ybarra, Mr. Ybarra testified that he had "no idea" about who is paying for his representation. *Id.*, Ex. 4 at 116:4-12. The same for Intervenor Ismael Campos, who likewise testified at his deposition that he was not paying for his attorneys and did not know who was. *See id.*, Ex. 5 at 84:25-85:15.

For these reasons, the State respectfully request that the Courts conduct an inquiry into whether Mr. Stokesbary and/or Holtzman Vogel have a conflict that precludes them from continuing to represent their clients in both matters. To determine whether a lawyer is in compliance with RPC 1.8(e)'s strict requirements, the Courts may need to review the third-party fee-arrangement agreement(s) or conduct a colloquy with lawyers and/or clients regarding fee

arrangements and to confirm whether fully informed consent was given. *See, e.g.*, *United States v. Fazzio*, No. 11-cr-157, 2011 WL 6140746, at *3 (E.D. La. Dec. 9, 2011) (reviewing the fee arrangement agreement in a criminal case and concluding that it produced conflicts).

D. Other Potential Issues Under RPCs 1.2 and 1.4 Related to Counsel's Representation

"The purpose of the rule against concurrent representation is based 'on the duty of undivided loyalty an attorney owes a client.'" *In re Cellcyte*, 2008 WL 5000156, at *3 (quoting *Smiley v. Office of Workers Comp. Programs*, 984 F.2d 278, 282 (9th Cir. 1993). In conducting any inquiries, then, the respective Courts may also wish to consider three additional issues regarding counsel's conduct with respect to Mr. Garcia and the *Soto Palmer* Intervenors. The first is counsel's apparently unauthorized representation that Mr. Garcia was willing to dismiss his suit if Intervenors were permitted to add their crossclaim. The second is counsel's attempt to plead a gerrymandering crossclaim on behalf of the *Soto Palmer* Intervenors that the Intervenors testified they did not support. The third is counsel's evident lack of communication with Mr. Garcia. These are discussed briefly in turn.

1. Counsel's representations regarding dismissal of *Garcia v. Hobbs*

RPC 1.2 provides that "a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4 [governing a lawyer's duty to communicate with their client], shall consult with the client as to the means by which they are to be pursued." RPC 1.2[2]; *see also* RPC 1.4(a)(2) ("A lawyer shall . . . reasonably consult with the client about the means by which the client's objectives are to be accomplished.").

Notwithstanding this obligation to abide by their client's wishes, it appears that counsel made unauthorized representations to the *Soto Palmer* Court that Mr. Garcia was willing to dismiss his lawsuit if the Court permitted Intervenor-Plaintiffs to add their crossclaim.

[2] RPC 1.2 is "[s]ubject to" limitations in paragraph (c) and (d), neither of which appear to apply here. *See* RPC 1.2(c) (providing that a lawyer may expressly limit the scope of representation, with the client's informed consent) and (d) ("A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent[.]").

Specifically, in opposition to *Soto Palmer* Plaintiffs' Motion to Bifurcate and Transfer, Strike, and/or Dismiss Intervenors' Crossclaim, Intervenors' counsel explicitly "represent[ed] that plaintiff in *Garcia v. Hobbs*, No. 3:22-cv-5152 (W.D. Wash.), will dismiss that action should Intervenors' Crossclaim go forward." *Soto Palmer*, Dkt. #109 at 2; *see also id.* at 4 ("Intervenors' counsel represents that *Garcia* will be voluntarily dismissed once it is clear that this Court will allow Intervenors' Fourteenth Amendment Crossclaim to proceed in this case."); *id.* at 6 ("Intervenors' counsel reiterates its representation that *Garcia* will be voluntarily dismissed once it is clear that the Court will allow Intervenors' Fourteenth Amendment Crossclaim to proceed."). That pleading was signed by Mr. Stokesbary. *Id.* at 7.

But in his deposition Mr. Garcia flatly denied authorizing his counsel to make these representations. Hughes Decl., Ex. 2 [Garcia Excerpts] at 47:8-12; 50:2-17. To the contrary, Mr. Garcia testified that it was extremely important to him to see this lawsuit to completion. *Id.* at 47:16-48:2, 50:12-14. Counsel's representations regarding voluntary dismissal of Mr. Garcia's suit without Mr. Garcia's consent further highlight the potential conflict between Mr. Garcia and his counsel and merit further inquiry by the respective courts.

2. Counsel's efforts to plead a crossclaim against the wishes of the *Soto Palmer* Intervenors

It appears that Mr. Stokesbary and Holtzman Vogel also failed to abide by their clients' wishes when they attempted to advance the crossclaim in the *Soto Palmer* matter identical to Mr. Garcia's claims in the *Garcia* matter. *See* RPC 1.2 ("[A] lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4 [governing a lawyer's duty to communicate with their client], shall consult with the client as to the means by which they are to be pursued."). The proposed crossclaim was contrary to the stated objectives of the *Soto Palmer* Intervenor-Plaintiffs, both of whom testified that they had no desire to modify the enacted map. *Compare Soto Palmer* Dkt. #103 (Amended Complaint with Proposed

Crossclaim) *with Soto Palmer* Dkt. #127 at 1-2; Dkt. #127-1 at 111:10-12; Dkt. #127-2 at 21:1-11 (intervenors' deposition testimony).

Counsel's misplaced attempt to reconcile their clients' disparate positions by advancing identical claims in both lawsuits only underscores the potentially irreconcilable conflict between their clients.

3. Lack of communication with Mr. Garcia

Finally, RPC 1.4 governs a lawyer's obligations to communicate with their client. Among other things, it requires a lawyer to "(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent . . . is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; [and] (3) keep the client reasonably informed about the status of the matter." RPC 1.4(a)(1)-(3). As Comment 1 succinctly explains: "Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation."

According to Mr. Garcia's deposition, between filing his Complaint in the Spring of 2022 and receiving a subpoena from the *Soto Palmer* Plaintiffs approximately a week before his deposition, Mr. Garcia had not spoken to Mr. Stokesbary, with the possible exception of a single letter five or six months prior. Hughes Decl., Ex. 2 at 97:20-98:7; 103:25-104:14. As a result of this lack of communication, Mr. Garcia did not know that he had an expert, had not reviewed the expert's report, and did not even know about the approaching trial date in his case. *Id.* at 105:5-106:4. This lack of communication is another factor the respective Courts may want to consider in evaluating whether counsel is able adequately to represent the interests of Mr. Garcia and the *Soto Palmer* Intervenors in this litigation.

IV. CONCLUSION

The government therefore respectfully requests that, at the Courts' earliest convenience, the Courts conduct inquiries to assure that counsel are in compliance with the Washington Rules of Professional Conduct.

DATED this 14th day of February, 2023.

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I certify that this memorandum contains 4,189 words, 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 14th day of February, 2023 at Seattle, Washington.

s/ Andrew R.W. Hughes
ANDREW R.W. HUGHES, WSBA No. 49515
Assistant Attorney General

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.

Cause No. C22-5035RSL

ORDER DENYING REQUEST FOR LEAVE TO AMEND AND CONTINUING TRIAL DATE

This matter comes before the Court on the Intervenor-Defendants' request to amend their answer to add a crossclaim for declaratory and injunctive relief (Dkt. # 103 at 2 n.1)[1] and "Plaintiffs' Motion to Bifurcate and Transfer, Strike, and/or Dismiss Intervenors' Crossclaim" (Dkt. # 105). The proposed amendment challenges the constitutionality of Legislative District 15

[1] Federal Rule of Civil Procedure 15(a) establishes the procedure for amending pleadings before trial. The fact that the Court established a deadline for amending pleadings in the case management order does not alter that procedure. Because Intervenor-Defendants are seeking to amend their answer more than 21 days after the original pleading was served, they may do so "only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). There is no indication that plaintiffs consented to the amendment. The Court therefore construes the amended pleading as a request for leave to amend.

and requests the appointment of a 3-judge panel to hear the crossclaim. When the Intervenor-Defendants sought leave to intervene on March 29, 2022, they argued that intervention was necessary "because the current posture of the case lacks a true 'adversarial presentation of the issues'" and each of the three intervenors had a stake in the boundaries as drawn by the Commission. Dkt. # 57 at 2-3. Their avowed purpose was to defend the existing boundaries and make sure that any changes that came out of this litigation did not violate their equal protection rights. They specifically declined to seek a modification of the case management deadlines.

Seven months later, Intervenor-Defendants filed an amended answer adding a crossclaim which, at its heart, is based on the proposition that the existing map is an unconstitutional racial gerrymander that cannot be justified under Section 2 of the Voting Rights Act because there was no legally significant racially polarized voting at the time the new district boundaries were drawn. The claim is essentially the same one presented in *Garcia v. Hobbs*, C22-5152RSL, which was filed on March 15, 2022, by attorney Andrew Stokesbary. Mr. Stokesbary also represents the Intervenor-Defendants in this case.

Intervenor-Defendants did not file a motion for leave to amend, nor have they addressed Fed. R. Civ. P. 15 or its application in any subsequent filing. At oral argument, Intervenor-Defendants merely pointed out that amendment under Rule 15(a)(2) should be freely granted when justice so requires and that the State believes that trying the Section 2 and constitutional claims together will be more efficient and avoid the risk of conflicting judgments.

There is a "strong policy in favor of allowing amendment" under Rule 15 (*Kaplan v. Rose*, 49 F.3d 1363, 1370 (9th Cir. 1994)), and "[c]ourts may decline to grant leave to amend only if there is strong evidence of undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, or futility of amendment, etc." (*Sonoma County Ass'n of Retired Employees v. Sonoma Cnty.*, 708 F.3d 1109, 1117 (9th Cir. 2013) (internal quotation marks and alterations omitted)). The underlying purpose of Rule 15 is "to facilitate decision on the merits, rather than on the pleadings or technicalities." *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). Having reviewed the papers submitted by the parties and the remainder of the record, the Court finds that there is strong evidence of undue delay and prejudice to non-moving parties in this case.

With regards to delay, Intervenor-Defendants have known of the alleged basis for their crossclaim since before they filed their motion to intervene. The only explanation offered for their delay in asserting the crossclaim is that discovery has confirmed that race was illegally emphasized during the redistricting process. But the discovery of additional evidence supporting a claim about which Intervenor-Defendants already knew in no way justifies a seven-month delay in asserting the claim. An unjustified delay is 'undue' for the purposes of the Rule 15 analysis. *W. Shoshone Nat'l Council v. Molini*, 951 F.2d 200, 204 (9th Cir. 2000).

With regards to prejudice, this case involves a Section 2 Voting Rights Act claim which may impact the boundaries of a legislative district and, thus, must be decided well ahead of the

next election cycle if plaintiffs are to obtain timely relief. *See Republican Nat'l Comm. V. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020).[2] Secretary of State Hobbs requests that there be no alteration to the current case management deadlines so that there is adequate time for a decision in this case, any appropriate appellate review, the revision of the legislative maps, adoption of the new maps, dissemination of the maps to local election officials, and implementation. Dkt. # 112. But the proposed amendment will almost assuredly require changes to the case management schedule. The nature of this case required an aggressive discovery schedule to ensure its timely resolution: discovery in this matter closed (with limited exceptions) on January 1, 2023. Motions practice and appeals related to standing and jurisdictional issues arising from the addition of a crossclaim subject to 28 U.S.C. § 2284 will likely occupy many weeks, if not months, of the time remaining before trial. Finally, even if the first two issues could be resolved or avoided, it is highly unlikely that a newly-appointed three-judge district court will be able to keep the current trial date of May 1, 2023.[3] Because introduction of Intervenor-Defendants' proposed crossclaim at this late date will introduce complicating factors and issues that will undoubtedly impact the case management schedule and would likely prevent

[2] Plaintiffs filed the above-captioned matter on January 19, 2022, after the Washington State Redistricting Commission had completed its redistricting tasks but before the legislature approved the amendments to the plan under RCW 44.05.100(2). Despite what might have been considered a "premature" or "early" lawsuit, their request for preliminary injunctive relief was denied because, by the time the matter was fully briefed, the date by which a revised districting plan needed to be in the hands of local election officials for the 2022 election cycle had already passed.

[3] The three-judge district court assigned to hear *Garcia* is not available on that date.

the resolution of plaintiffs' claims in time for the 2024 election cycle, the Court finds that the requested amendment would cause prejudice to the non-moving parties.

Finally, denying leave to amend under Rule 15 will not thwart a decision on the merits of the proposed equal protection claim. As mentioned above, that claim is already being pursued in *Garcia*, and a three-judge district court is scheduled to hear that case in June 2023.

For all of the foregoing reasons, Intervenor-Defendants' request for leave to amend their answer to add a crossclaim in the above-captioned matter (Dkt. # 103 at 2 n.1) is DENIED, and plaintiff's motion to bifurcate, transfer, strike, or dismiss the crossclaim (Dkt. # 105) is DENIED as moot. The Court finds, however, that judicial efficiency will best be served by hearing the Section 2 and the equal protection claims together on June 5, 2023, the date on which *Garcia* is currently scheduled for trial before a three-judge district court. A revised case management order will be issued in *Palmer*. At the close of evidence at the consolidated trial, the undersigned will issue a decision on the Section 2 claim, and the three-judge district court will then consider the constitutional claim. Judgments in the two matters will be issued on the same day so that the appeals, if any, can proceed together.

Dated this 20th day of January, 2023.

Robert S. Lasnik
United States District Judge

EXHIBIT C

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

* * * * *

Video-Recorded Remote Deposition
Upon Oral Examination of
Paul Graves
December 14, 2022

* * * * *

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

SUSAN SOTO PALMER, et al., Plaintiffs, v. STEVEN HOBBS, in his official capacity as Secretary of State of Washington, and the STATE OF WASHINGTON, Defendants, and JOSE TREVINO, ISMAEL G. CAMPOS, and State Representative ALEX YBARRA, Intervenor-Defendants.) No. 3:22-cv-05035-RSL

VIDEO-RECORDED REMOTE DEPOSITION UPON ORAL EXAMINATION OF PAUL GRAVES

Wednesday, December 14, 2022
9:02 a.m. to 4:55 p.m.

VIDEOGRAPHER: MIKE ELDERKIN

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(Continued on next page)

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A No, I did not.
Q All right. Was there any -- You know, again, this is my only time to talk to you. So is there any member of the Commission that, you know, you think is dishonest or handled you unprofessionally or you're going to testify, you know, was untoward in their conduct with you?
MR. MILLSTEIN: Objection, form.
A I have great respect for everybody who was on that Commission.
Q (By Mr. Dunn) At any time did you have contact with an Adam Kincaid?
A Yes.
Q Who is Mr. Kincaid?
A He works for a group called the National Republican Redistricting Trust.
Q And how is it you came into his contact?
A I don't remember if he emailed me when I was appointed or if maybe one of Republican members of our delegation gave me his contact information. I don't remember exactly how we connected.
Q So did you ultimately talk with him, speak with him?
A I had coffee with him in, I think, June of last year.
Q In Washington or someplace else?
A The other Washington.

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Q In Washington, D.C. you and he met for coffee?
MR. HUGHES: Objection, vague.
A That's the funniest vague objection there is. Yes, in Washington, D.C.
Q (By Mr. Dunn) All right. Was it the case you traveled to D.C. for this meeting, or were there other meetings you had scheduled?
A I had other meetings scheduled.
Q Were they all in relation to redistricting?
A No.
Q What other meetings did you have other than the one with Mr. Kincaid in D.C. about redistricting?
A I had meetings with, you know, people with the American Trucking Association.
Q In relation to your employment?
A That's right.
Q So the only meeting you had then was with Mr. Kincaid as it related to redistricting?
A No.
Q Who else did you meet there in D.C. about redistricting?
A I met with Congress members Jaime Herrera Beutler and Dan Newhouse and Cathy McMorris Rodgers.
Q Any others?
A Each one of them had a staff member with them.

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Q And that's all?
A Yes.
Q Okay. Now, is it fair to describe all those meetings in relation to the congressional map, or was there any discussion or consideration of the legislative map in those meetings?
A The legislative maps probably came up. All three of the members of Congress serve in the Legislature as well and, of course, have great interest in what the legislative maps look like in their districts. So it probably came up, but the primary focus was on the congressional maps.
Q Was there any discussion there about the 15th Legislative District or the Yakima area district?
A Not that I recall, no.
Q Did you -- Was that meeting with Mr. Kincaid early on in your Redistricting Commission work?
A I think it was maybe June.
Q Did you have any other meetings or discussions with Mr. Kincaid?
A Yes.
Q Were they all in relation to the congressional map?
A No.
Q Did you have any discussions with Mr. Kincaid as it relates to the 15th Legislative District area?

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A No.
Q Did you have any discussion with Mr. Kincaid about the Voting Rights Act and its requirements?
A Not specifically, no.
Q Did you ever discuss with Mr. Kincaid experts or demographers that might be available to assist you in your work?
A I think so. In fact, now that I think about it, Mr. Brunell that I talked about earlier, I might have -- I might have first heard of him from Mr. Kincaid.
Q Do you recall whether other names were proposed to you?
A I don't remember.
Q Did you ever send drafts of maps or proposals to Mr. Kincaid or somebody working at his direction?
A No.
Q Did you have any conversation with Mr. Kincaid after the map was finalized?
A Yes.
Q When was that?
A In maybe around March of this year.
Q And what was that -- What was that discussion about?
A We were facing the prospect of a default judgment in this particular case, and I really didn't want that to happen. I wanted to try to defend the maps as we drew

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them.
And so I was talking with a lot of people about the prospect of getting an intervenor or maybe a plaintiff of some kind. I wasn't sure exactly what it would look like, but he was one of the people who I talked to about the prospect of making sure we wouldn't have a default judgment on such an important issue.
Q Did he recommend to you counsel?
A No, I don't think so.
Q Is Mr. Kincaid a lawyer, as far as you know?
A I don't know if he is.
Q You didn't view the relationship you had with Mr. Kincaid as an attorney-client relationship?
A No. That's why I produced my communications to you with him.
Q The -- You mentioned something about a default judgment. What default judgment were you worried about?
A The Secretary of State was the primary defendant in this case; and he told this Court that he was the wrong defendant, but he was not going to move to dismiss and also would not defend the maps.
And the Attorney General's Office then took the position that it did not have an obligation at that time to defend the maps. And so there was a very real prospect of a default judgment on this very important issue, which

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I thought would have been a disaster.
Q Again, without talking, you know, about any attorney-client privileged communications, I mean, this potential of a default judgment, was that an idea you developed on your own?
A Yes.
Q Okay. And so what did you do to head that off or deal with that issue?
A I was faced with the prospect of having to raise private funds to defend a public map, so I was trying to do that. I thought it was outrageous, but I also know it's the kind of outrage that's not going to make news or get anybody worked up.
So I tried diligently to do whatever I could to forestall that possibility and to see if the maps themselves could be defended.
Q You mentioned that you didn't know whether that would take place as an intervention or an additional party. What did you mean by that?
A Procedurally it was really funky because again, this lawsuit only named the Speaker of the House, the State House, and the Senate Majority Leader and the Secretary of State as defendants, and so there wasn't a particular defendant in the case who was -- like you normally have in a case who was oppositional to the plaintiff.

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And so I didn't know procedurally whether to stave off a default judgment you would need to have an intervenor or -- You know, you saw the Davis Wright memo, whether there would be the prospect of an Equal Protection claim that might be at odds with it. Whatever it was going to be it was all pretty murky, and I was just trying it see if we could defend the maps.
Q What action did you take in that regard?
A Talked to lawyers to see if anybody wanted to do it for free, and talked to people who might want to help finance it, and tried to do everything I could to make sure that the maps could be defended.
Q Were you ultimately able to locate lawyers and/or financing?
A No.
Q How is it that filing an Equal Protection claim would help defend the map?
A It would at least forestall a default judgment. You know, that was my first and most immediate concern because it was so time sensitive. There was a hearing, I think, that was scheduled on this, and it seemed like a very important hearing.
So I thought that again, because I'm well aware enough that you don't have a lot of people who want to stump up private money to do the public act of defending

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the act of the state. I thought there might be people who might be interested in filing some kind of other claim that might have forestalled that. It wasn't my goal.
My immediate goal was to stave off a default judgment, and my secondary goal was to defend the maps. But I thought that if anybody was going to file an Equal Protection claim like that it would at least meet that immediate goal of avoiding a default judgment.
Q The Equal Protection claim was filed in a different case, though; is that your recollection?
A I think so, although by that point I had -- I had stopped, you know, communicating with the lawyers who were involved with all of that.
Q Do you know why the Equal Protection claim was filed in a different case rather than in this one?
A I genuinely don't.
Q Who was it, the lawyers you were talking to?
A Rob Maguire.
Q Any others?
A A man by the name of Jason Torchinsky.
Q Any others?
A Drew Stokesbary.
Q How did you know Mr. Torchinsky? Excuse me.
A I think maybe Mr. Kincaid gave me his name.
Q How did you know Mr. Stokesbary?

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A He and I served in the State House of Representatives together.
Q How did you know he would have interest in the litigation?
A I -- I didn't, but he's one of the Republican lawyers that I know who might have been interested in taking something like this on.
Q Is it fair to say that you put these three men together as a team, or did that come together without your participation?
A No. No, that was -- Whatever they ended up deciding on the particulars, I wasn't involved with that. I just tried to light the fire as it were to get things moving.
Q And do you think you did that?
A Not as well as I would have liked. You know, my -- Again, my primary -- my main immediate term goal was to have a really clear party that was defending the maps, and I'm not sure I achieved that.
Q And other than -- Well, other than Mr. Maguire's letter report that we talked about extensively earlier today, has Mr. Maguire done any other legal work for you?
MR. STOKESBARY: Objection to the extent it calls for privileged communications.
MR. MILLSTEIN: I'll make the same objection. No problem with answering has he done legal

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work; but if you're going to get into the subject of legal work, I'll instruct the witness not to answer to the extent it calls for attorney-client privileged communications.
A Okay. Yes, I've worked with Mr. Maguire on other matters.
Q (By Mr. Dunn) And have any of those matters occurred after the report that you shared publicly?
A No.
Q And again, going no further into the topic, are any of those other matters at all related to redistricting?
A The other matters that came before all this?
Q Yes.
A No.
Q Okay. How about for Mr. Torchinsky, have you ever had an attorney-client relationship with him?
A No.
Q And how about Mr. Stokesbary?
A No.
Q All right. There's been a number of cases filed in the 15th Legislative District area under the Voting Rights Act pertaining to local political subdivisions.
Are you aware of this?
A Are you talking about like the Yakima County and Yakima City cases?

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Q Yes.
MR. HUGHES: Object to form.
A Yes.
Q (By Mr. Dunn) Have you looked into any of the litigation files as it pertains to Voting Rights Act cases in that area of the state?
MR. HUGHES: Object to form.
A What do you mean by -- What do you mean by litigation files?
MR. MILLSTEIN: Objection. Same objection. Sorry.
Q (By Mr. Dunn) Sure, that's fine. Have you looked at any of the pleadings filed in any of those Voting Rights Act cases?
MR. HUGHES: Object to form.
A I can't recall having done so.
Q (By Mr. Dunn) Have you looked at any of the expert reports that were exchanged or filed?
A No, I can't recall doing that.
Q Have you looked at any of the testimony?
A No, I have not.
Q When is it that you can recall first becoming aware that those cases had been filed and proceeded with?
A I think it's as they were -- as they were happening I was -- I read the newspaper. I was aware that they

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were -- there was litigation in Yakima.
Q The -- Do you recall -- So it sounds like you were sort of monitoring as they were developing. Is that fair, or is that too strong to stay?
A That's probably too strong. I read, just read the news, so I probably saw headlines and maybe read a story here or there.
Q At any point in your Redistricting Commission work was there -- were these cases raised to you or mentioned to you?
A I think there was reference to, I think, the county case in the Barreto report.
Q Was there any other mention of these cases in the course of the Redistricting Commission's work that you recall?
A I seem to recall a brief conversation I had with Commissioner Augustine about those cases. She lives in Yakima.
Q What do you recall about that discussion?
A Not much.
Q Do you recall her telling you how those cases resulted, what the Court did?
A No.
Q Did you ever read the Court's opinion or orders?
A No, I don't think that I did.

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you wanted to make the Yakima Valley district majority Hispanic?
A I don't remember -- remember if I -- if I said that.
Q Do you recall telling him that you wanted to make the Yakima Valley district lean Republican?
A I don't remember the specifics, I'm afraid to say.
Q Okay. Do you recall saying that you wanted to be able to protect against the lawsuit?
A I don't remember saying that. And again, I don't remember many conversations about the topic of lawsuits, but it certainly could be possible that, you know, that topic might have come up.
Q Did you want to protect the Commission against a lawsuit?
A The primary goal was to comply with the law. I thought if we -- if we did that, then we'd have a good chance at not getting involved in protracted lawsuits.
Q Well, with that answer I can skip several questions.
Do you recall what data you were using -- Well, let me back up.
We were just talking about the 2019 American Community Survey; correct, you and Mr. Dunn?
A Yes, we talked about that.
Q And do you recall that's the data that you were using to measure Hispanic citizen voting age population?

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A The citizen part I think we were because the census data did not have citizenship information on it, but I think at the end of the day we were using the 2020 census data for racial and ethnic information.
Q But for the citizen part you were using you recall the 2019 ACS survey data?
A Yes.
Q And did you have an understanding that the 2019 ACS data undercounted the Hispanic citizen voting age population in 2021 when you were doing this redistricting work?
A I believe the -- Yeah, the 2019 American Community Survey's data, when compared with the actual 2020 census data, it involved an undercount of minority communities.
Q So if you were proposing a district then that was say 51 percent Hispanic by CVAP according to the 2019 ACS data you were using, did you understand at the time that the actual Hispanic CVAP was likely higher?
A Oh, yes.
Q So when you say there was an agreement to a 50.1 percent Hispanic CVAP in the final maps, you understood that the actual district was going to be considerably more Hispanic by citizen voting age population; is that correct?
A You were kind of cutting in and out. I think I

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heard everything, but --
Q Should I --
A -- could you reask it again?
Q Of course. Did you understand then -- Earlier you mentioned agreeing to a 50.1 percent Hispanic CVAP district. Did you understand at the time that it was likely to be considerably more Hispanic by CVAP, the actual district you were agreeing to?
A Yes.
Q Are you aware, Commissioner Graves/Mr. Graves, that the plaintiffs in the Soto Palmer lawsuit allege that you intentionally discriminated against Hispanics in drawing Legislative District 15?
A I'm aware of that allegation.
Q What's your response to that allegation?
MR. MILLSTEIN: And I'll just object to the extent it calls for a legal conclusion.
A Disappointing but not surprising. The cynic in me knows that you have to make those allegations.
The person in me who tried my level best to comply with the law, and especially to treat minority communities well throughout this process, of course is hurt by that.
It's the nature of being a Republican that you simply get called a racist all the time for mere disagreement. So it's not the first time, and it probably

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won't be the last.
But they're hurtful, and I think wrong allegations.
Q (By Mr. Hughes) So let me ask directly, and I don't mean to put salt in any wounds; but did you intentionally discriminate against Hispanic voters in drawing your maps?
A No.
Q There's a purported expert in this case named Dr. Henry Flores. In paragraph 46 of his expert report, which I understand you haven't seen, but he says -- and here I'm quoting -- "The evidence clearly demonstrates that Graves's intent ultimately reflected in the final map was to draw a majority Latino CVAP district in the Yakima Valley, but with a progressively decreasing likelihood for Latinos there to elect their candidate of choice -- candidates of choice."
Do you have a response to this allegation?
A I never met or heard of that person. I'm not in the habit myself of declaring the intent of other people who I've never met or talked to.
I also think it's backward, actually. My expectation is that the Hispanic population in the 15th will increase as a proportion of the population over the course of the decade. And again, he uses majority, I think, Latino there, and we were talking about majority Hispanic, so I quibble with that.

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But more generally, there are plenty of people in this world who feel free to declare the intent of people they've never met or talked to. I'm not one of them, and I think fewer people should do that.
Q So you disagree with Dr. Flores' statement here?
A Yeah, I do.
Q Have you read any of the recent pleadings in this case?
A No.
Q So then you have not read -- It's an unwieldy title, but you have not read Plaintiffs' Reply in Support of Motion to Bifurcate and Transfer, Strike, and/or Dismiss Intervenors' Crossclaim filed on November 25th; correct?
A I have not. And good grief, what are you guys litigating?
Q You don't want to know, my friend.
Are you aware that plaintiffs' counsel publicly accuses you of, quote, "coordinating the funding and filing of the racial gerrymandering legal challenge against the plan he drew"?
A No, I wasn't aware of that.
Q Are you aware that plaintiffs' counsel publicly alleges that, quote, "After plaintiffs filed this lawsuit Commissioner Graves went to work to stand up a competing legal challenge with the aim of undermining Latino voting

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strength even further"?
A No, I wasn't aware of that.
Q Do you have any response to these allegations?
A It's absolutely wrong. My goal was to avoid a default judgment and to defend the maps. I still want to defend the maps. I think they deserve to be defended.
I think that that's all absolutely wrong, not true at all. I was in the position of having to try to privately finance and defend the maps. I had to do that, but that's a false allegation. It's pretty scurrilous.
Q And no one from plaintiffs' counsel ever spoke with you before making this allegation, I assume.
A I think the first time I've talked with anybody from plaintiffs' counsel is today.
Q Are you surprised to learn that the only citation for this allegation is the email you were asked about earlier today involving Maguire and Adam -- I forget his name -- Kincaid?
A People misconstrue evidence all the time, especially if they don't talk to witnesses, especially if they have maligned intent.
So it's not surprising, but it's really disappointing, and wrong.
Q You say it's wrong. I'll ask the question, anyway, just to get the record clear.

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Did you coordinate with anyone in challenging the adopted legislative maps as a racial gerrymander?
A No. My goal was to defend the maps.
Q You don't believe the maps are a racial gerrymander, do you?
A No, I don't think so.
MR. STOKESBARY: Sorry. Objection to the extent that calls for a legal conclusion.
MR. HUGHES: No further questions. I apologize for the cat, but no further questions.
MR. STOKESBARY: All right. I -- Oh, sorry. I jumped over Kate.
Did you have any questions, Kate?
MS. WORTHINGTON: Sorry. My mic wasn't communicating well. Nope, none from me.
MR. STOKESBARY: Okay. Thank you.
Paul, or Mr. Graves, before I get started Andrew asked you this before he got started, but it's been a little while.
Do you want to take a break?
THE WITNESS: Yeah. Can we take five minutes?
MR. STOKESBARY: Sure.
THE VIDEOGRAPHER: Going off record, the time is 4:08.

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(Break 4:08 p.m. to 4:14 p.m.)
THE VIDEOGRAPHER: Back on the record, the time is 4:14.
E X A M I N A T I O N
BY MR. STOKESBARY:
Q All right. Thank you for bearing with us, Mr. Graves. I introduced myself at the beginning, but for the record I'm Drew Stokesbary with the law firm Chalmers and Adams. I represent a collection of three individuals in this case who are Intervenor-Defendants, two of whom are also cross Plaintiffs.
From time to time I'm going to be looking kind of off camera. That's not intentional, no disrespect to you. I have my camera on a very small screen; and it would be too small for me to read some of my notes and see your face at the same time, so that is why I will be looking off to the side.
One other question -- this came up earlier in the deposition -- but you indicated on the record that we have known each other for a number of years; is that correct?
A You and I, yes, we have.
Q But have we discussed this deposition before today?
A No.
Q Have I informed you about any questions that I plan to ask you today?

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A No. We've been really clear that we're not discussing this.
Q Have we coordinated your answers in any way?
A No.
Q Okay. One other thing to clarify. This has come up in most of the other depositions, but I don't think it has come up yet today; but I'm going to be using the terms Hispanic and Latino interchangeably. I understand that they mean different things. Some people might identify as one or the other or prefer one description or the other, but I'm simply using it to mean Hispanic or Latino of any race as defined by the Census Bureau.
So one thing that you testified for -- at various points earlier today was about the final contours of the 15th District in the map that was enacted by the Commission.
Do you remember some of the things that you talked about today?
A I think so.
Q So in particular what is your recollection of the final Hispanic CVAP percentage of the 15th District?
A Again, I recalled it at 50.1 percent.
Q So ignoring the significance of decimals, roughly a slight majority?
A Yes.

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Q And what is your recollection of the average Republican performance in that district?
A I don't know about average, but using the 2020 state treasurer results by precinct in that district, I think it was the Republican candidate for that office would have won all the precincts there. It was about 53 percent of the vote.
Q So could you elaborate briefly on how that particular pair of metrics, a slight Hispanic CVAP majority and a slight Republican lean came to be? Was it a negotiated compromise? Something else?
A It was a negotiated compromise between me and Commissioner Sims primarily in the first instance.
Q But to effect that compromise you felt that the district had to contain at least a 50 percent Hispanic CVAP proportion?
A I wasn't convinced that it was required by the law, but I understood that to get at least Commissioner Sims' vote it was something that was necessary.
Q Okay. Moving on. Another topic that came up was Dr. Matt Barreto. I apologize if I'm pronouncing that name wrong. I've not had the chance to meet him. And at various points there were questions about his analysis, his presentation, and his report.
So I just want to confirm. So there was a slide

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deck that was admitted as I think the first Exhibit 7, and you indicated that you had seen it before.
Is that the only quote, unquote, "report" that you had seen from Dr. Barreto?
A I think so, yes.
Q So there wasn't some other document, like a narrative in text form that you saw, just PowerPoint slides?
A There was a news report where I first learned of it that was, I think, in the publication Crosscut; and I think it had maybe some quotes in there, maybe some further explication, but not an additional report or document.
Q Okay. So around the time you sort of saw his presentation you saw the news stories about it, what was your impression of Dr. Barreto?
A I didn't have much of an impression. I -- I hadn't heard much about him or anything like that. And really the first thing I saw related to all this was the news story and the report.
Q So apologies, my question might not have been worded well. Once you saw the analysis and the news stories what kind of impression began to be developed in your mind at that point?
A Well, I knew at that point that he had done work I

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think exclusively for Democrats; and to the extent partisanship was involved here, he might be somebody who would be inclined to lead things and to draw conclusions that might favor Democrats.
Q So then did it appear to you that he was pursuing a district with a particular partisan design?
A That's one of the ways that I read the report, yes.
Q It's okay if you don't recall this, and it's -- I'm not going to bring up the exhibit again; but do you recall when you saw it for the first time that those PowerPoint slides contained two different sort of proposed or hypothetical districts that Dr. Barreto argued would comply with the Voting Rights Act?
A I think I saw those maps there in that presentation on the day I saw the news report.
Q Do you recall whether you had any impressions or opinions about those two proposals, how they were drawn?
A My first impression was they crossed and split up many cities and counties; that they weren't what you would call geographically compact, or -- And they didn't seem to reach toward the ideal of keeping communities of interest together.
Q So earlier Andrew Hughes representing the State had you read an RCW that listed some various state law requirements. In your -- In your opinion did the two

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The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SUSAN SOTO PALMER et al.,

Plaintiffs,

v.

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

Defendants,

and

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

Intervenor-Defendants.

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

INTERVENOR-DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO BIFURCATE AND TRANSFER, STRIKE, AND/OR DISMISS INTERVENORS' CROSSCLAIM[1]

INTRODUCTION

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

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

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

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

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

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

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

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

The distinction between the constitutional and statutory claims is also pertinent to Intervenors' demand for a three-judge court. Intervenors make this demand only for the constitutional claim, to which they are entitled as a matter of right. *See* 28 U.S.C. § 2284. Intervenors do not demand a three-judge court to hear Plaintiffs' statutory claims; although, should the Court send all the claims to a three-judge court as a matter of judicial efficiency[3], Intervenors would welcome the decision. That said, Intervenors partially agree with Plaintiffs that the claims may be bifurcated, but only for trial purposes. The result is that this Court would hear Plaintiffs' VRA claims, and the three-judge court, which would include this Court as one of its members, would hear Intervenors' Fourteenth Amendment claim—but that discovery, primarily depositions, would be done together. This process would be made easier by keeping the Intervenors and Cross-Plaintiffs the same.

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

Intervenors oppose Plaintiffs' request to transfer Intervenors' Crossclaim to *Garcia*. First, Plaintiffs lack standing to make this request because they are not Cross-Defendants. The

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

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

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Crossclaim is not against them but rather the State of Washington and Secretary of State Steve Hobbs. Plaintiffs also lack standing to request that the Court strike or dismiss Intervenors' Crossclaim for the same reason. Second, Intervenors' counsel represents that *Garcia* will be voluntarily dismissed once it is clear that this Court will allow Intervenors' Fourteenth Amendment Crossclaim to proceed in this case.

For all these reasons, the Court should deny Plaintiffs' Motion and allow Cross-Plaintiffs' Crossclaim to proceed.[5]

ARGUMENT

I. The Court May Bifurcate Intervenors' Crossclaim for Trial, Not for Discovery.

Partial bifurcation may[6] be warranted. This Court may handle Plaintiffs' VRA claims through trial, but a three-judge court must hear Intervenors' Fourteenth Amendment claim at trial. However, the discovery phase need not be bifurcated. Rule 42 provides that "[f]or convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, or third-party claims." Fed. R. Civ. P. 42(b).

It is more efficient to keep Intervenors as the racial gerrymander plaintiffs in this case instead of entertaining the various requests that Plaintiffs make (without standing). No new discovery needs to occur, other than that which would occur in the ordinary course of Plaintiffs' claims. No new parties need to be added. Instead, the process would be streamlined: All discovery would be handled by this Court for the common nucleus of the constitutional and statutory claims. Both claims concern LD 15 and its history and, therefore, should continue together until the trial phase, when the three-judge panel would hear the constitutional claim. On the other hand, full bifurcation or transfer would result in new discovery, additional expense, and delay.

[5] Intervenors note that Plaintiffs' instant Motion is only against Intervenors' Crossclaim and not its Amended Answer to Plaintiffs' Amended Complaint. *See* (Dkt. # 105).
[6] *See supra* n.3.

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Here, again, Intervenors act only in good faith. Intervenors' proposal to keep *Palmer* together through discovery is intended to make the process more streamlined for all parties and the Court.

II. Plaintiffs Lack Standing to Move to Transfer Intervenors' Crossclaim to *Garcia* or to Move Alternatively to Strike or Dismiss Intervenors' Crossclaim.

Plaintiffs are not Cross-Defendants. They are Plaintiffs for separate claims and thus only have an interest in the Court's treatment of their claims. They do not, however, have an interest in Intervenors' Crossclaim, which is between Intervenors and the State Defendants. Plaintiffs are not a party to Intervenors' Crossclaim and, thus, cannot give recommendations as to what should happen to it. Plaintiffs may move to dismiss *counterclaims* made against them, but this *crossclaim* has nothing to do with them. Both the constitutional and statutory claims, of course, share a common nucleus of fact—which warrants keeping discovery together—but Plaintiffs have no standing to seek dismissal of a claim between Intervenors and Defendants in which Plaintiffs are not named defendants. *See Mantin v. Broadcast Music, Inc*., 248 F.2d 530, 531 (9th Cir. 1957) ("[T]he moving defendants, obviously, had no standing to seek dismissal of the action as to the nonmoving defendants."); *Simon v. Buttercreek II Homeowners Ass'n*, No. CV 21-02198 TJH (AS), 2021 U.S. Dist. LEXIS 251760, at *4–5 (C.D. Cal. Nov. 9, 2021) ("Because Simon's FDCPA claim was not asserted against Shetty, but against only Buttercreek and S.B.S., Shetty lacks standing to challenge it"); *Rucker v. Ocwen Loan Servicing, LLC*, No. 11cv1242 DMS (BGS), 2011 U.S. Dist. LEXIS 99953, at *2 n.1 (S.D. Cal. Sept. 6, 2011) ("Defendant moves to dismiss Plaintiff's TILA claim, but it is not named as a defendant on that claim. Accordingly, the Court declines to address Defendant's arguments for dismissal of that claim."); *Newsom v. Countrywide Home Loans, Inc*., 714 F. Supp. 2d 1000, 1006 (N.D. Cal. 2010) ("Countrywide lacks standing to seek the dismissal of a claim in which it is not named as a defendant."); *Essex Builders Grp., Inc. v. Amerisure Ins. Co*., 429 F. Supp. 2d 1274, 1291 (M.D. Fla. 2005) ("The Court cannot conceive how [the plaintiff] has standing to seek dismissal of Amerisure's cross-claim against

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OneBeacon."). Plaintiffs therefore cannot request anything of this Court post-bifurcation, be that maintaining, transfer, striking, or dismissal.

In any case, there's no redundancy here. Intervenors' counsel reiterates its representation that *Garcia* will be voluntarily dismissed once it is clear that the Court will allow Intervenors' Fourteenth Amendment Crossclaim to proceed.

III. Intervenors' Filing of Their Amended Answer and Crossclaim Is Consistent with the Practice of This Court and District Courts in the Ninth Circuit.

In the event the Court views Intervenors' Amended Answer as a motion for leave, (Dkt. # 103 at 2 n.1) the Court should grant leave. Intervenors relied on the negotiated, Court-approved Scheduling Order in this case, which permitted amendments to pleadings until November 2, 2022. (Dkt. # 93 at 1.) This was proper to do in this Circuit. *See, e.g.*, *CollegeNET, Inc. v. XAP Corp.*, No. CV-03-1229-HU, 2004 U.S. Dist. LEXIS 13983, at *5 (D. Or. July 14, 2004) ("[The court] allowed defendant's Amended Answer and Counterclaims to stand based on interpreting the scheduling order's express deadline to amend pleadings as obviating the need for a party to move to amend before it could file an amended pleading."); *Corona v. Athwal Almonds, Inc.*, No. 1:15-cv-01486 LJO SKO, 2016 U.S. Dist. LEXIS 45556, at *4–5 (E.D. Cal. Apr. 4, 2016) ("[I]n the interest of party and judicial economy the Court will construe Defendants' filing [of its Amended Answer] as a request for leave to amend the answer, and grant this request."); *Levy v. FCI Lender Servs.*, No. 3:18-cv-02725-GPC-WVG, 2019 U.S. Dist. LEXIS 128078, at *6 (S.D. Cal. July 31, 2019) (treating a "FAC as a motion for leave to file a FAC with a proposed FAC" where the FAC was filed within the deadline set by the scheduling order).

As with every motion and step in this case, Intervenors acted in good faith. There was no gamesmanship here, but rather a good-faith effort to bring a crossclaim based upon new information that arose in discovery—all within the bounds and timeline of the Scheduling Order. Intervenors respectfully ask the Court to recognize the timeliness of Intervenors' Amended Answer and Crossclaim.

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Moreover, even if the Court chooses to treat Intervenors' filing as a motion for leave, it should be granted. Timely, good-faith seeking of leave to amend should be granted with "extreme liberality." *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001) (quoting *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990)).

CONCLUSION

Intervenors ask this Court to convene a three-judge panel for Cross-Plaintiffs' racial gerrymander crossclaim as mandated by law, while keeping the statutory and constitutional claims together for discovery purposes.

DATED this 18th day of November, 2022.

Respectfully submitted,

s/ Andrew R. Stokesbary
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Counsel for Intervenor-Defendants

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SUSAN SOTO PALMER et al., *Plaintiffs*, v. STEVEN HOBBS, in his official capacity as Secretary of State of Washington, et al., *Defendants*, and JOSE TREVINO, ISMAEL G. CAMPOS, and State Representative ALEX YBARRA, *Intervenor-Defendants*.	Case No.: 3:22-cv-5035-RSL INTERVENOR-DEFENDANTS' AMENDED ANSWER TO AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CROSSCLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF REQUEST FOR THREE JUDGE COURT

Intervenor-Defendants Jose Trevino, Ismael G. Campos and State Representative Alex Ybarra ("Intervenors") hereby file this Amended Answer to Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief (Dkt # 70), and Intervenors/Cross-Plaintiffs Jose Trevino and Alex Ybarra hereby file this Crossclaim for Declaratory and Injunctive Relief against Defendants Steven Hobbs and the State of Washington. Intervenors answer as follows: To the extent an allegation is directed to Defendants Steven Hobbs or the State of Washington, Intervenors are without sufficient information to form a belief as to the truth of the allegation and therefore deny.

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To the extent that the Amended Complaint's headings or subheadings contain factual allegations, they are denied. Intervenors reserve the right to amend this pleading as permitted by this Courts rules and orders, including Fed. R. Civ. P. 15.[1]

INTRODUCTION

1. This paragraph states a legal conclusion to which no response is required. To the extent a further response is required, denied.

2. Intervenors admit that Legislative District 15[2] includes parts of the Yakima Valley and Pasco. The remainder of this paragraph states a legal conclusion to which no response is required. To the extent a further response is required, denied.

3. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

4. Denied.

5. Intervenors admit that the cities of Toppenish, Wapato and Mabton, portions of the city of Yakima, and Benton, Grant and Franklin Counties are located within Legislative District 15. The remainder of this paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

6. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

---

[1] Pursuant to this Court's Scheduling Order, (*see* Dkt. # 93 at 1 (setting the "[d]eadline for amending pleadings" as November 2, 2022)), Intervenors file this Amended Answer and Intervenors/Cross-Plaintiffs Trevino and Ybarra file this Crossclaim. To the extent the Court deems that a separate Motion for Leave to Amend is required, Intervenors request that the Court treat this filing as a Motion for Leave to Amend with a proposed Amended Answer. *See, e.g.*, *CollegeNET, Inc. v. XAP Corp.*, No. CV-03-1229-HU, 2004 U.S. Dist. LEXIS 13983, at *5 (D. Or. July 14, 2004) ("[The court] allowed defendant's Amended Answer and Counterclaims to stand based on interpreting the scheduling order's express deadline to amend pleadings as obviating the need for a party to move to amend before it could file an amended pleading.").

[2] Unless specifically indicated otherwise, all references to "Legislative District 15" contained in this Answer refer to the "new" boundaries of Legislative District 15 as established by the Commission's legislative redistricting plan submitted in December 2021 and amended by the Washington State Legislature during its 2022 regular session. *See* H. Con. Res. 4407, 67th Leg., 2022 Reg. Sess. (Wash. 2022) (adopted).

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7. Intervenors admit that the City of Othello is located in Adams County and in Legislative District 15. Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

8. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

9. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

10. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

11. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

12. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

13. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

14. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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15. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

16. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

17. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

18. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

19. Intervenors deny that even-number legislative district elections are held only in presidential election years and odd-numbered legislative district elections are held only in non-presidential years. (Elections for state representative positions are held every two years, in both presidential and non-presidential election years. Elections for state senator positions are held every four years, with elections in 13 odd-numbered districts and 12 even-numbered districts occurring in presidential election years, and elections in 12 odd-numbered districts and 12 even-numbered districts occurring in non-presidential election years.) The remainder of this paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

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20. Intervenors admit that 15 is an odd-number and that elections for state senator in Legislative District 15 are currently held in non-presidential years. Intervenors deny that "[b]y assigning the district an odd number, the Commission has ensured even lower Latino voter turnout in the district." As noted in the paragraph above, elections for state representative positions, including those for Legislative District 15, are held every two years, meaning both presidential and non-presidential election years. Elections for state senator positions are held during presidential election years in 13 odd-numbered districts and 12 even-numbered districts, and during non-presidential election years in 12 odd-numbered districts and 12 even-numbered districts.

21. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

22. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the brief quotation from *LULAC v. Perry*, 548 U.S. 399 (2006). To the extent a further response is required, denied.

23. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

24. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

25. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

26. Intervenors admit that Legislative District 15 as currently constituted encompasses the eastern portion of Yakima County. To the extent a further response is required, denied.

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27. Intervenors admit that, in the November 2018 general election, incumbent United States Senator Maria Cantwell, running for reelection to her fourth term, received 43.27 percent of the total votes (not including write-ins) within current Legislative District 15, and that challenger Bengie Aguilar received 39.41 percent of the total votes (not including write-ins) for the position of Legislative District 15 State Senator, running against a five-term incumbent (who was also elected to two terms in the State House of Representatives from Legislative District 15 prior to his election to the State Senate). Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

28. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

29. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

30. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

31. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

32. Intervenors admit only that presidential preference primaries conducted pursuant to Wash. Rev. Code ch. 29A.56 require political affiliation. Intervenors deny that any other races or offices require political affiliation. *See* Wash. Rev. Code § 29A.52.112.(4) ("A candidate may choose to express no party preference."). Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

33. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

34. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

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JURISDICTION AND VENUE

35. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

36. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only that 42 U.S.C. § 1988 and 52 U.S.C. § 10310(e) authorize certain courts to award certain fees to certain prevailing parties bringing certain claims under certain statutes in certain situations.

37. Admitted.

38. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only that venue is proper in this judicial district.

PARTIES

39. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

40. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

41. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

42. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

43. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

44. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

45. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

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46. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

47. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

48. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

49. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

50. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

51. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

52. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

53. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

54. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

55. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

56. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

57. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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58. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

59. Intervenors admit only that the language in quotations in the second sentence of this paragraph accurately quotes a portion of Wash. Rev. Code § 29A.04.230. Intervenors further admit that Wash. Rev. Code § 29A.04.255 provides that the Secretary of State will accept and file certain documents, including some declarations of candidacy. Intervenors admit that the Amended Complaint purports to assert a claim against Defendant Hobbs in his official capacity as the Secretary of State of Washington. Otherwise, this paragraph asserts legal conclusions and contains legal arguments, to which no response is required. To the extent a further response is required, denied.

60. Intervenors admit that that this Court entered an Order of Joinder (Dkt. # 68) ordering Plaintiffs to amend their original Complaint (Dkt. #1) to add the State of Washington as a Defendant. Otherwise, this paragraph asserts legal conclusions and contains legal arguments, to which no response is required. To the extent a further response is required, denied.

LEGAL BACKGROUND

61. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotations from Section 2 of the Voting Rights Act. To the extent a further response is required, denied.

62. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotation from *Thornburg v. Gingles*, 478 U.S. 30 (1986). To the extent a further response is required, denied.

63. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotation from *Thornburg v. Gingles*. To the extent a further response is required, denied.

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64. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotation from *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016). To the extent a further response is required, denied.

65. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only that this paragraph cites to Section 2(b) of the Voting Rights Act. To the extent a further response is required, denied.

66. Intervenors admit that the majority report of the Senate Committee on the Judiciary accompanying the 1982 bill which amended Section 2 of the Voting Rights Act, S. Rep. No. 97-417, at 28-29 (1982), listed seven "typical factors" courts may consider in deciding whether Section 2 has been violated. Intervenors further admit that this paragraph substantially copies a summary of these factors that the United States Department of Justice maintains on its website. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

67. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only that this paragraph cites to two district court opinions. To the extent a further response is required, denied.

68. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotations from *United States v. Marengo County Commission*, 731 F.2d 1546 (11th Cir. 1984). To the extent a further response is required, denied.

69. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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70. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotations from *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977) and *North Carolina State Conference of NAACP v. McCrory*. To the extent a further response is required, denied.

71. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotation from *North Carolina State Conference of NAACP v. McCrory*. To the extent a further response is required, denied.

72. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotation from *Hunter v. Underwood*, 471 U.S. 222 (1985). To the extent a further response is required, denied.

73. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only that this paragraph cites an opinion by a district court in the Fifth Circuit and another opinion from the Sixth Circuit. To the extent a further response is required, denied.

74. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotation from *LULAC v. Perry*. To the extent a further response is required, denied.

75. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only that this paragraph cites an opinion by a district court in the Fifth Circuit. To the extent a further response is required, denied.

76. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the

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accuracy of the brief quotations from *LULAC v. Perry* and *Perez v. Abbott*, 250 F. Supp. 3d 123 (W.D. Tex. 2017). To the extent a further response is required, denied.

FACTUAL ALLEGATIONS

77. Admitted.

78. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

79. Admitted.

80. Admitted.

81. Admitted.

82. Admitted.

83. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

84. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

85. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

86. Intervenors admit that much of Yakima County, including the cities of Yakima, Toppenish, Sunnyside and Grandview, is part of the "Yakima Valley," but deny that this paragraph contains an accurate or complete list of the cities and counties within the "Yakima Valley" as typically conceived by residents of the region, and further deny that Benton or Franklin Counties or any of the Tri-Cities are part of the "Yakima Valley."

87. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

88. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

89. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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90. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

91. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

92. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

93. Admitted.

94. Admitted.

95. Admitted.

96. Intervenors admit that, according to the 2020 Census, the total combined population of individuals who identify as Hispanic or Latino in Benton, Franklin and Yakima Counties is 231,833. Intervenors deny that Benton and Franklin Counties, or even the entirety of Yakima County, are part of the "Yakima Valley." Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

97. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

98. Admitted.

99. Admitted.

100. Admitted.

101. Admitted.

102. Admitted.

103. Admitted.

104. Intervenors admit that upon approval of a redistricting plan by three of the voting members of the Commission, the Commission must submit the plan to the Legislature, but deny that Wash. Rev. Code § 44.05.110 is the authority for this proposition.

105. Intervenors admit that after submission of the plan by the Commission, the Legislature has the next thirty days during any regular or special session to amend the

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Commission's plan by an affirmative vote in each house of two-thirds of the members elected or appointed thereto, but deny that Wash Rev. Code § 44.05.110 is the authority for this proposition.

106. Intervenors admit that if the Legislature amends the Commission's plan, the legislative amendment may not include more than two percent of the population of any legislative or congressional district, but deny that Wash. Rev. Code § 44.05.110 is the authority for this proposition.

107. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotation from subsection (1) of Wash. Rev. Code § 44.05.120. To the extent a further response is required, denied.

108. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only that redistricting plans must comply with the United States Constitution and deny the allegations in the remainder of this paragraph.

109. Admitted.

110. Admitted.

111. Admitted.

112. Admitted.

113. Admitted.

114. Admitted.

115. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

116. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

117. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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118. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

119. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

120. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

121. Intervenors admit that Commissioner Sims' original proposed map placed the City of Pasco into Legislative District 16, but are otherwise without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph.

122. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

123. Intervenors admit that Commissioner Walkinshaw's original proposed map placed the City of Pasco into Legislative District 16, but are otherwise without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph.

124. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

125. Intervenors admit only that on or about October 19, 2021, the Washington State Senate Democratic Caucus circulated a presentation by Dr. Matt Barreto, a professor of political science and Chicana/o studies at UCLA and co-founder of the UCLA Voting Right Project and that a copy of the presentation slide deck is available at https://senatedemocrats.wa.gov/wp-content/uploads/2021/10/Barreto-WA-Redistricting-Public-Version.pdf. Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

126. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

127. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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128. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

129. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

130. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

131. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

132. Intervenors admit only that several news outlets in Washington published articles regarding Dr. Barreto's presentation. Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

133. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

134. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

135. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

136. Intervenors admit only that slides 22 and 23 of the referenced slide deck each contain the phrase "VRA Compliant Option" in large font, depict a noncompact shaded area superimposed on a map of South-Central Washington, and present several numbers in a table. Otherwise, this paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

137. Intervenors admit only that slide 22 of the referenced slide deck contains the phrase "VRA Compliant Option-1: Yakima-Columbia River Valley" in large font, depicts a noncompact shaded area superimposed on a map of South-Central Washington, and presents several numbers

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in a table. Otherwise, this paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

138. Intervenors admit only that slide 23 of the referenced slide deck contains the phrase "VRA Compliant Option-2: Yakama Reservation" in large font, depicts a noncompact shaded area superimposed on a map of South-Central Washington, and presents a several numbers in a table. Otherwise, this paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

139. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

140. Admitted.

141. Intervenors admit that a page on the Commission's website, available at https://www.redistricting.wa.gov/commissioner-proposed-maps, contains a subheading titled "Revised Map October 25, 2021" below the names of both Commissioner Sims and Commissioner Walkinshaw, and that below each of these subheading are links to legislative district maps in various formats. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

142. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

143. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

144. Denied. *See* Order Regarding the Washington State Redistricting Commission's Letter to the Supreme Court on November 16, 2021 and the Commission Chair's November 21, 2021 Declaration ("Redistricting Order"), No. 25700-B-676, at 2 (Wash. Dec. 3, 2021) ("This

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dispute was resolved before midnight on November 15, 2021. That night, at 11:59:28 p.m., the Commission voted unanimously to approve a congressional redistricting plan, and, at 11:59:47 p.m., voted unanimously to approve a legislative redistricting plan. Taken together, the chair's sworn declaration and the minutes of the Commission's November 15, 2021 meeting establish that the Commission approved both redistricting plans by the constitutional deadline established in article II, section 43 of the Washington State Constitution.").

145. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

146. Intervenors admit only that the Commission did not approve "a *letter* transmitting the plan" to the Legislature until shortly after midnight on November 16, 2021. Redistricting Order at 2 (emphasis added); *cf. supra* ¶ 145 (explaining that the redistricting plan itself was approved on November 15). To the extent a further response is required, denied.

147. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

148. Intervenors admit that the Washington Supreme Court "decline[d] to exercise its authority under article II, subsection 43(6) and chapter 44.05 Wash. Rev. Code to adopt a redistricting plan because it concludes that the plan adopted by the Washington State Redistricting Commission met the constitutional deadline and substantially complied with the statutory deadline to transmit the matter to the legislature." Redistricting Order at 4.

149. Admitted.

150. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

151. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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152. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

153. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

154. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

155. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

156. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

157. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

158. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

159. Intervenors admit only that in the November 2012 general election for State Representative, Position 2 in Legislative District 15, then-Representative David Taylor defeated a challenger named Pablo Gonzalez. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

160. Intervenors admit only that in the November 2014 general election for State Senator in Legislative District 15, Senator Jim Honeyford defeated a challenger named Gabriel Muñoz. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

161. Intervenors admit only that in the November 2014 general election for State Representative, Position 2 in Legislative District 15, then-Representative David Taylor defeated a

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challenger named Teodora Martinez-Chavez. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

162. Intervenors admit only that in the November 2018 general election for State Senator in Legislative District 15, Senator Jim Honeyford defeated a challenger named Bengie Aguilar. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

163. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

164. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

165. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

166. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

167. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

168. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

169. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

170. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

171. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

172. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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173. Intervenors admit that, under Washington law, state legislative offices are "[p]artisan office[s] . . . for which a candidate may indicate a political party preference on his or her declaration of candidacy and have that preference appear on the primary and general election ballot in conjunction with his or her name." Wash. Rev. Code § 29A.04.110. Intervenors further admit that the "Republican" and "Democratic" parties are frequently listed by candidates for state legislative office as their party preference. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

174. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

175. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

176. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

177. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

178. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

179. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

180. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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181. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

182. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

183. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

184. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

185. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

186. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotation from *Luna v. County of Kern*, 291 F. Supp. 3d 1088 (E.D. Cal. 2018). Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

187. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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188. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

189. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

190. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

191. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

192. Denied.

193. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

194. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

195. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

196. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

197. Intervenors admit that the cities of Wapato, Toppenish and Mabton are not located within Legislative District 15. Intervenors deny that Legislative District 15 excludes the City of Yakima. The remainder of this paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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198. Intervenors admit only that the cities of Wapato, Toppenish and Mabton are not located within Legislative District 15, but are otherwise without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

199. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

200. Intervenors admit that the City of Othello is located in Adams County and in Legislative District 15. Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

201. Denied.

202. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

203. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

204. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

205. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

206. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

207. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

208. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

209. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

210. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

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211. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

212. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

213. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

214. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

215. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotation from *Luna v. County of Kern*. To the extent a further response is required, denied.

216. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

217. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

218. Intervenors admit only the accuracy of the quotation from the article cited in this paragraph. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

219. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

220. Intervenors admit that, according to contemporaneous news coverage, Mr. Zambrano-Montes was shot and killed by police, but are otherwise without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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221. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

222. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

223. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

224. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

225. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

226. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

227. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

228. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

229. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

230. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

231. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

232. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

233. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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234. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

235. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

236. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

237. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

238. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

239. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

240. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

241. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

242. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

243. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

244. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

245. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

246. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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247. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

248. Intervenors admit that Melissa Reyes, an individual, League of United Latin American Citizens, a Texas nonprofit corporation, and Latino Community Fund of Washington State, a Washington nonprofit corporation, are plaintiffs in the case *Reyes v. Chilton*, No. 4:21-cv-05075 (E.D. Wash. filed May 7, 2021). Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

249. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

250. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

251. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

252. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

253. Intervenors admit that Jose Trevino is the Mayor of the City of Granger, but are otherwise without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

254. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

255. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

256. Admitted.

257. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

258. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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259. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

260. Intervenors admit that Pablo Gonzalez, Teodora Martinez-Chavez and Bengie Aguilar have been unsuccessful candidates for state legislative offices in Legislative District 15 during the past decade. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

261. Intervenors admit that Representatives Bruce Chandler and Jeremie Dufault currently serve as State Representatives from Legislative District 15 and that Senator Jim Honeyford currently serves as State Senator from Legislative District 15. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

262. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

263. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

264. Intervenors admit only that in the November 2016 general election for State Representative, Position 1 in Legislative District 14, then-Representative Norm Johnson defeated a challenger named Susan Soto Palmer. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

265. Intervenors admit that Representatives Gina Mosbrucker and Chris Corry currently serve as State Representatives from Legislative District 14 and that Senator Curtis King currently serves as State Senator from Legislative District 14. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

266. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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267. Intervenors admit that former Commissioner Jesse Palacios was elected to the Yakima County Board of Commissioners in 2002. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

268. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

269. Denied. Intervenor Trevino, who is Hispanic and resides in the Yakima Valley in Legislative Districts 15, believes that his state legislators and other elected officials in the region are responsive to his needs and those of other Hispanic/Latino residents. Intervenor Campos, who is Hispanic and resides in Kennewick in Legislative District 8, denies that the Tri-Cities are part of the Yakima Valley but also believes that his state legislators and other elected officials in the Tri-Cities are responsive to his needs and those of other Hispanic/Latino residents there. Intervenor Representative Ybarra, who is Hispanic and represents Legislative District 13 in the State House of Representatives, believes he is responsive to the needs of his Hispanic/Latino constituents.

270. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

271. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

CLAIMS FOR RELIEF

272. Intervenors repeat and incorporate by reference their responses to all allegations in the Amended Complaint.

273. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

274. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

275. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

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276. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

277. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

278. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

279. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

280. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

281. Intervenors repeat and incorporate by reference their responses to all allegations in the Amended Complaint.

282. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

PRAYER FOR RELIEF

Intervenors deny that Plaintiffs are entitled to any relief.

GENERAL DENIAL

Intervenors deny each and every allegation in Plaintiffs' Amended Complaint that is not expressly admitted above.

INTERVENORS' AFFIRMATIVE DEFENSES

Intervenors' affirmative defenses to the Amended Complaint are set forth below. By setting forth the following defenses, Intervenors do not assume the burden of proof on the matter and issue other than those in which they have the burden of proof as a matter of law. Intervenors reserve the right to supplement these defenses.

FIRST AFFIRMATIVE DEFENSE

1. Plaintiffs have failed to file "a short and plain statement of the claim showing that that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

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SECOND AFFIRMATIVE DEFENSE

2. Plaintiffs' Amended Complaint includes multiple conclusory allegations without supporting factual allegations showing an entitlement to relief.

THIRD AFFIRMATIVE DEFENSE

3. Plaintiffs fail to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6).

FOURTH AFFIRMATIVE DEFENSE

4. This Court lacks subject-matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1).

FIFTH AFFIRMATIVE DEFENSE

5. Plaintiffs lack standing to bring their claims and request relief.

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE

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

EIGHTH AFFIRMATIVE

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

NINTH AFFIRMATIVE DEFENSE

9. Plaintiffs seek inappropriate relief, including relief that is not within Intervenors or any of the present Defendants' authority to accomplish.

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PRELIMINARY STATEMENT TO CROSSCLAIM

1. In an attempt to create a Voting Rights Act ("VRA")-compliant, majority-minority district—which the VRA did not require here—the Washington State Redistricting Commission ("Commission") engaged in open racial gerrymandering in violation of the Fourteenth Amendment.

2. Here, the Commission had a specific racial target for the Hispanic citizen voting age population ("HCVAP") in Legislative District 15.

3. The Equal Protection Clause of the Fourteenth Amendment's mandates race neutrality in governmental decision-making, including a state's drawing of its legislative districts.

4. When race is the predominant factor motivating the creation of a legislative district, that district cannot be upheld unless it satisfies strict scrutiny.

5. Thus, the burden is on Defendants to demonstrate that the creation of District 15 was narrowly tailored to serve a compelling state interest.

6. Section 2 of the VRA did not and does not require the creation of a majority-minority district because there was no legally significant racially polarized voting at the time District 15 was drawn.

7. Consequently, the Commission's predominant use of race when drawing District 15 could have only one result: racial discrimination in violation of the Fourteenth Amendment.

CROSSCLAIM[3]

8. Intervenor-Defendant/Cross-Plaintiff Jose Trevino and Intervenor-Defendant/Cross-Plaintiff Representative Alex Ybarra (together "Cross-Plaintiffs") bring this action to challenge the constitutionality of Washington State Legislative District 15 in the Yakima Valley as an illegal racial gerrymander in violation of the Equal Protection Clause of the Fourteenth Amendment to Constitution of the United States.

[3] Paragraph numbering is continued from the Preliminary Statement.

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9. As part of the 2021 redistricting process, the Commission approved, and the Washington State Legislature (the "Legislature") amended and ratified, a plan for the redistricting of state legislative districts in which Legislative District 15 was purposely drawn to have a Hispanic Citizen Voting Age Population ("HCVAP") of greater than 50%.

10. The Equal Protection Clause bars redistricting on the basis of race without sufficient legal justification—despite any Commissioners' mistaken good-faith belief that a VRA district was required in the Yakima Valley.

11. This new Legislative District 15 can only be explained by race.

12. The district's odd shape, which crosses five county lines, bisects two of the largest cities in Central and Eastern Washington, and divides certain communities of interest while combining other communities with divergent interests, flies in the face of traditional districting principles (as well as Washington state constitutional and statutory requirements).

13. Contemporaneous public statements of the voting members of the Commission (each, a "Commissioner") provide further evidence that a majority HCVAP legislative district in Central and Eastern Washington was a precondition to the Commission's approval of any state legislative district plan.

14. Moreover, some Commissioners and Commission staffers have since admitted that they had an explicit racial target for District 15.

15. Because racial considerations predominated over others, the design of District 15 must be subjected to strict scrutiny.

16. Thus, the burden shifts to the State to prove that its race-based sorting of voters serves a compelling interest and is narrowly tailored to that end.

17. There was no compelling interest that justified using race as the predominant factor in creating Legislative District 15.

18. Although complying with Section 2 of the VRA is a compelling state interest, the State has the burden of showing that it had a strong basis in evidence to conclude that Section 2 required its action.

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19. Two Commissioners stated that Section 2 of the Voting Rights Act compelled a safe Democrat, majority HCVAP district.

20. Their conclusion was based primarily on (1) a short presentation solicited by the State Senate Democratic Caucus and created by an interested advocacy organization, and (2) analysis performed in other litigation relating to different maps.

21. As an initial matter, a presentation by an interested party is not enough to create a compelling interest, as a group that wants a State to create a district with a particular design may favor an overly expansive understanding of what Section 2 demands.

22. Moreover, the advice provided to the Democratic Senate Caucus was incorrect.

23. *Thornburg v. Gingles*, 478 U.S. 30 (1986), lays out the three preconditions to finding a violation of the VRA and, by extension, the preconditions to finding that a majority-minority district is necessary to comply with the VRA.

24. Those conditions are: (1) the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the minority group must be able to show that it is politically cohesive; and (3) the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate.

25. None of the three preconditions were satisfied here.

26. Simply put, Section 2 did not require the creation of a majority-minority district.

27. Additionally, the state must prove its action was narrowly tailored, which the state cannot do if it does not carefully evaluate and consider race-neutral alternatives.

28. The Commissioners' stated prerequisite that creating a majority HCVAP district was necessary to obtaining the Commission's approval of any state legislative district plan necessarily means the Commission did not consider race-neutral alternatives.

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

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30. Because the Commissioners subjected Cross-Plaintiffs to unconstitutional racial classifications through a racially gerrymandered district where they reside, Cross-Plaintiffs have suffered injury.

31. Cross-Plaintiffs therefore seek a declaration that Legislative District 15 is invalid and an injunction prohibiting the Defendant from calling, holding, supervising or taking any action with respect to State Legislative elections based on Legislative District 15 as it currently stands.

PARTIES

32. Intervenor-Defendant/Cross-Plaintiff Jose Trevino is a United States citizen, over the age of eighteen, and a registered voter in the State of Washington. Cross-Plaintiff Trevino resides in Granger, Washington, and under the Commission-approved map, resides in Legislative District 15. He regularly voted in past elections and intends to vote in future elections. Cross-Plaintiff Trevino is harmed by the violation of his Fourteenth Amendment rights because Legislative District 15 is an illegal racial gerrymander, drawn with race as the predominant factor.

33. Intervenor-Defendant/Cross-Plaintiff Alex Ybarra is a State Representative for the State of Washington, a United States citizen, over the age of eighteen, and a registered voter in the State of Washington. He has regularly voted in previous elections and intends to vote in future elections. Cross-Plaintiff Ybarra represents—and is running for reelection in—Legislative District 13 of the Washington House of Representatives. Because race predominated in the drawing of District 15, any change to District 15 will likely impact District 13. Any change to District 13 will affect Cross-Plaintiff Ybarra's protectable interest in avoiding delays in the election cycle and in knowing ahead of time which voters will be included in his district.

34. Cross-Defendant Steven Hobbs is being sued in his official capacity as the Secretary of State of Washington. Under state law, the Secretary of State is "the chief election officer for all federal, state, county, city, town, and district elections," RCW 29A.04.230, responsible for "the administration, canvassing, and certification of . . . state primaries, and state

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general elections,"[4] RCW 43.07.310. In addition, "declarations of candidacy for the state legislature . . . in a district comprised of voters from two or more counties"—such as Legislative District 15—are to be filed with the Secretary of State. RCW 29A.24.070.

35. Cross-Defendant State of Washington includes the respective governmental arms responsible for adopting redistricting plans and ensuring that elections are conducted in accordance with those plans in the State.

JURISDICTION AND VENUE

36. This Court has jurisdiction to hear Cross-Plaintiffs' claim pursuant to 42 U.S.C. §§ 1983 and 1988 and 28 U.S.C. §§ 2284, 1331, 1343(a)(3) and 1357. This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202. This Court has jurisdiction to award Cross-Plaintiffs' costs and attorneys' fees pursuant to 42 U.S.C. § 1988, and 52 U.S.C. § 10310(e). This Court only has jurisdiction over the Crossclaim after an appointment of a three-judge panel pursuant to 28 U.S.C. § 2284.

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

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

THREE-JUDGE COURT

39. A three-judge district court is requested and required pursuant to 28 U.S.C. § 2284(a), which provides that a "district court of three judges shall be convened . . . when an

[4] "The plan approved by the commission . . . shall constitute the districting law applicable to this state for legislative . . . elections, beginning with the next elections held in the year ending in two." RCW 44.05.100(3). Thus, the Secretary of State administers legislative district elections based on the boundaries established by the Commission's redistricting plan.

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action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body."

40. Cross-Plaintiffs are challenging, via their Crossclaim asserted under the Fourteenth Amendment, the apportionment of Legislative District 15, which is a legislative district of the Washington State Legislature—a statewide legislative body.

41. Therefore, a three-judge court is required.

FACTS

Washington State Redistricting

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

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

44. The Washington state constitution requires that "[e]ach district . . . contain a population . . . as nearly equal as practicable to the population of any other district" and that "[t]o the extent reasonable, each district . . . contain contiguous territory, . . . be compact and convenient, and . . . be separated from adjoining districts by natural geographic barriers, artificial barriers, or political subdivision boundaries." WASH. CONST. art. II, § 43(5).

45. In addition, the Commission's redistricting plan "shall not be drawn purposely to favor or discriminate against any political party or group." *Id.*

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

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

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

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

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

51. Following the Commission's adoption of a redistricting plan, it "shall take all necessary steps to conclude its business and cease operations . . . on July 1st of each year ending in two." RCW 44.05.110.

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

The History of Legislative District 15

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

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

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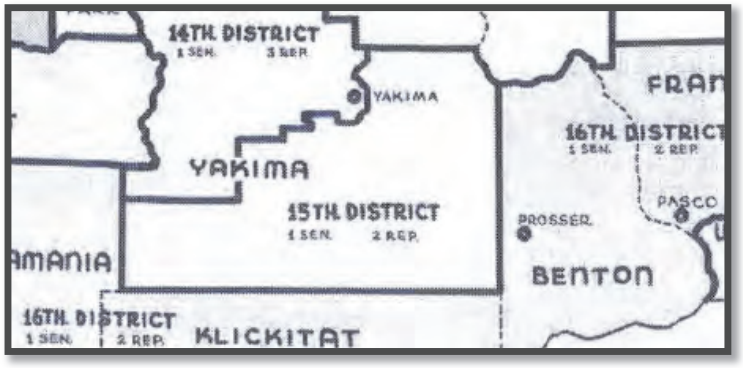
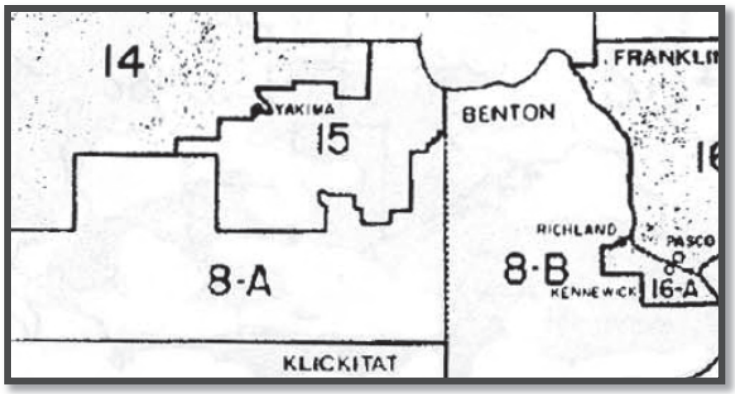


55. A map of Legislative District 15 from 1957 through 1965 is shown below. The district included only a portion of Yakima County. *Id.* at 177.

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



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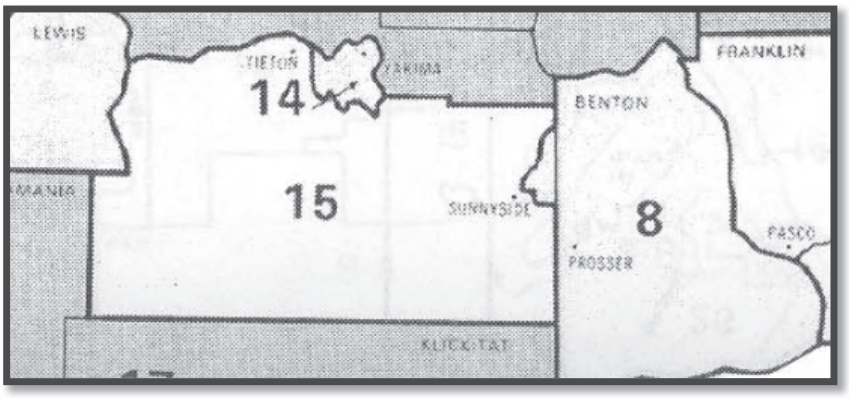
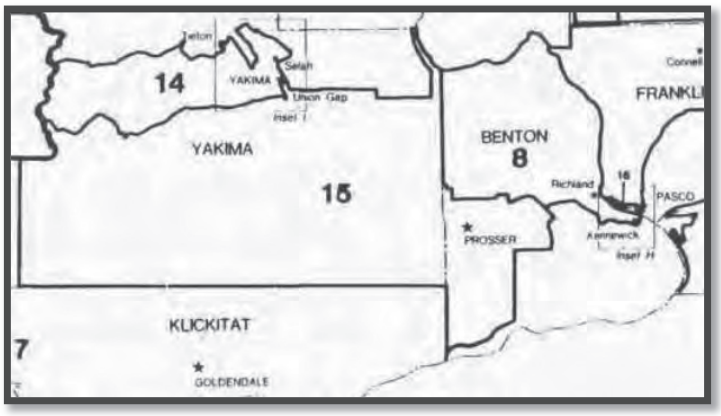
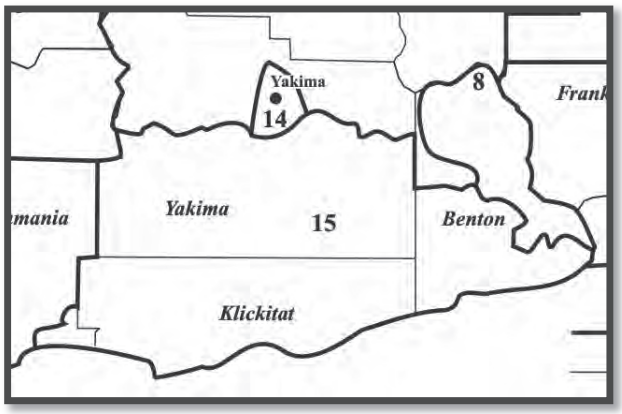
57. A map of Legislative District 15 from 1972 through 1981 is shown below. The district included only a portion of Yakima County. *Id.* at 182.



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



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



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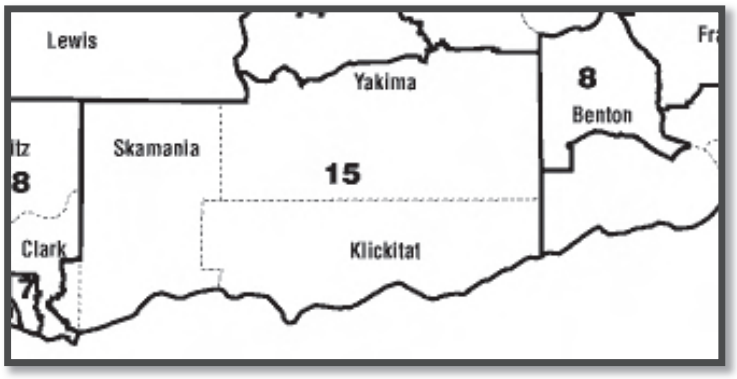
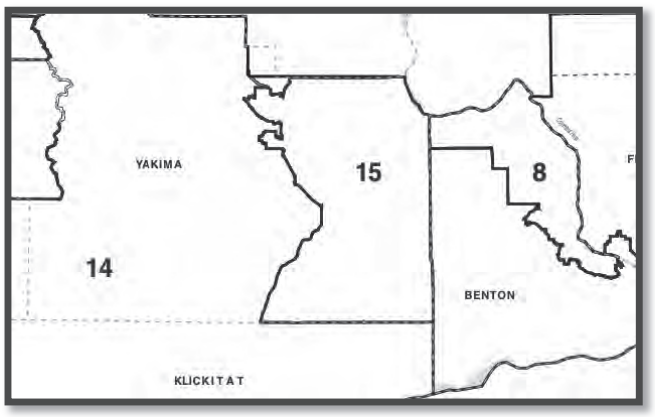
60. A map of Legislative District 15 from 2002 through 2011 is shown below. The district included a portion of Yakima, Klickitat, Skamania, and Clark Counties. *Id.* at 188.



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



The 2021 Redistricting Process

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

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

64. On January 30, 2021, the four voting Commissioners appointed Sarah Augustine as the nonvoting, fifth member and Chair of the Commission. *E.g.*, Pat Muir, YAKIMA HERALD-REPUBLIC, *White Swan woman tapped to lead state Redistricting Commission*, Feb. 8, 2021, *available at* https://www.yakimaherald.com/news/local/white-swan-woman-tapped-to-lead-state-redistricting-commission/article_37671834-78c9-5cec-a5a5-d9d1aab30f72.html.

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

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

67. No Commissioner proposed a version of Legislative District 15 that resembled the district as drawn by the Commission's final redistricting plan.

68. No proposal, for example, contained the cities of Pasco or Othello, and none contained a majority HCVAP. *See id.*

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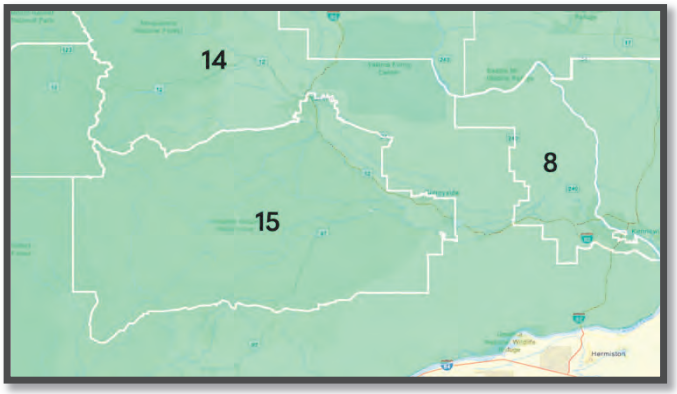
69. The map of Legislative District 15 initially proposed by Commissioner Sims is shown below. It combined the Yakama Indian Reservation with parts of Yakima and communities along Interstate 82 to Grandview. Commissioner Sims stated that her map "recognizes the responsibility to create districts that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



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

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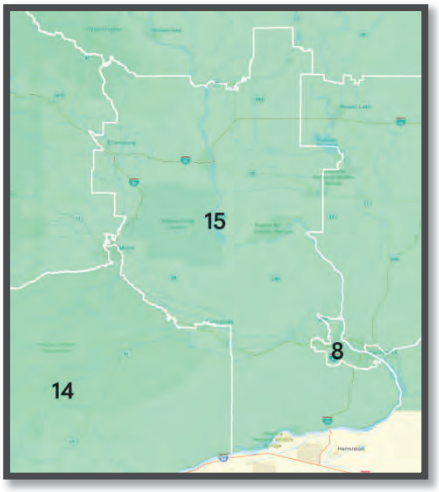
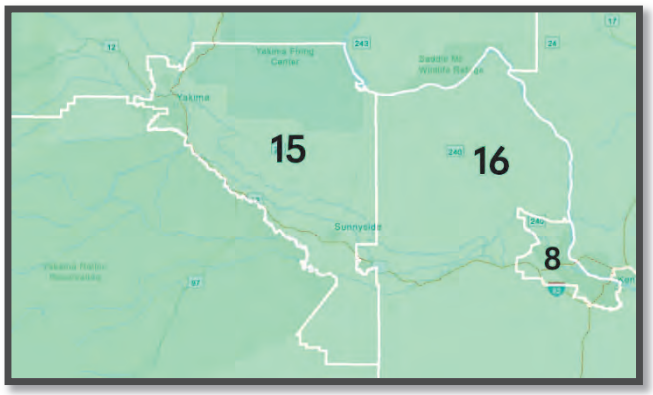


71. The map of Legislative District 15 as proposed by Commissioner Fain is shown below. It included the City of Yakima and consisted of the eastern third of Yakima County. Commissioner Fain "place[d] existing school district boundaries at the cornerstone of his legislative framework." His plan also "create[d]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



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

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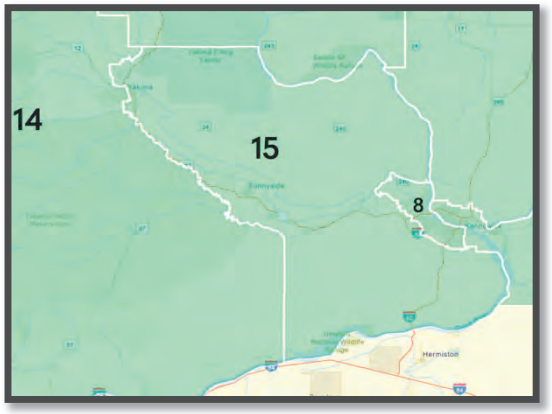

73. On October 19, 2021, the Washington State Senate Democratic Caucus circulated a presentation by Dr. Matt Barreto, a professor of political science and Chicana/o studies at UCLA and co-founder of the UCLA Voting Rights Project. *See* Presentation by Matt Barreto, Assessment of Voting Patterns in Central/Eastern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

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

75. The presentation argued that, to comply with Section 2 of the Voting Right Act, a majority HCVAP district in the Yakima Valley that voted for the Democratic Party's preferred candidates was required. *See id.*

76. The presentation included an analysis of voting patterns for just two statewide general elections, the 2012 U.S. Senate race between Maria Cantwell and Michael Baumgartner and the 2020 Governor race between Jay Inslee and Loren Culp. *See id.* Neither analysis included a Hispanic candidate.

77. The presentation did not include analysis of voting patterns in primary elections, or any other analysis exploring whether voting patterns could be explained by partisanship, rather than race. *See id.*

78. Importantly, the presentation also did not consider or suggest any race-neutral alternatives despite showing that the districts initially proposed by Commissioners Sims and

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Walkinshaw would have voted for the Latino bloc's preferred candidate over the majority bloc's preferred candidate in the 2020 President/Vice President race. *See id.*

79. Only two claimed "VRA Compliant" legislative district options were presented. One district contained a HCVAP of approximately 60% and the other contained a Latino CVAP of approximately 52%, without any explanation for why the different thresholds were chosen. *See id.*

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

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

82. On October 25, 2021, Commissioners Sims and Walkinshaw released revised legislative plans, both of which incorporated the "Yakama Reservation" district option from Dr. Barreto's presentation, which achieved a 60% minority CVAP by combining Latino and Native populations. No presentation was made or evidence provided to the Commission showing that Latino voters and Native voters are cohesive.

83. On October 26, 2021, less than three weeks before the Commission's statutory deadline, Washington State Senate Democrats issued a press release holding out Dr. Barreto's

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presentation as "definitive," stipulating that "the final adopted map must include a majority-Hispanic district in the Yakima Valley." Press Release, Washington Senate Democrats, *Walkinshaw releases new VRA-Compliant Legislative map* (Oct. 26, 2021), https://senatedemocrats.wa.gov/blog/2021/10/26/following-new-analysis-commissioner-walkinshaw-releases-new-legislative-map-compliant-with-voting-rights-act/.

Legislative District 15 under the 2021 Plan

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

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

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

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

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

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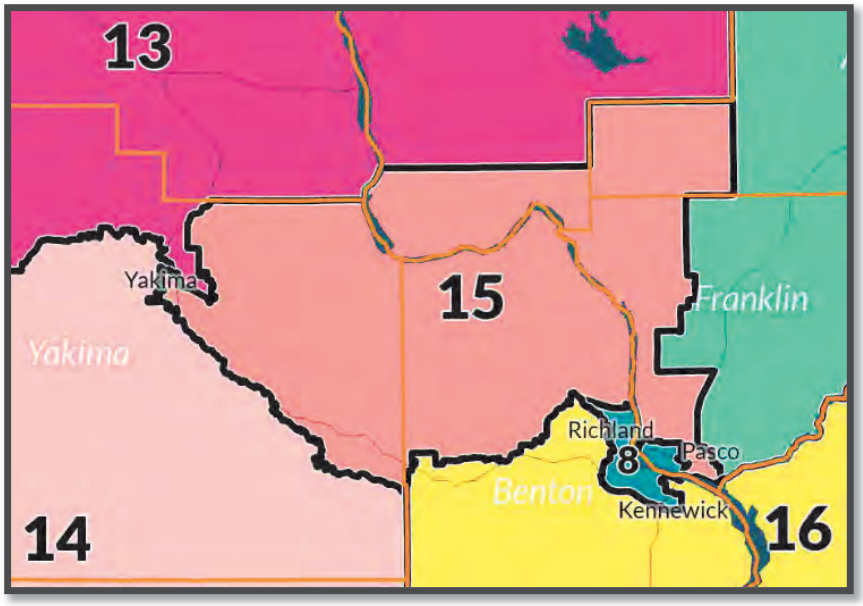

89. The shape of Legislative District 15 is strained and noncompact. Its northwest and southeast corners are narrow slivers of land that reach into the cities of Yakima and Pasco respectively, where a substantial majority of the district's population resides. The district extends north to Mattawa and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

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

91. The Commission ignored communities of interest in creating Legislative District 15. The district's boundaries not only split up urban communities like Yakima and Pasco, but smaller cities like Grandview, Moxee and Union Gap. And while Legislative District 15 divides communities of shared interest, it also groups together communities with distinctly different

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interests. For example, it extends to Pasco, Othello, Mattawa and the Hanford Nuclear Site, none of which have previously been placed in the same legislative district as the city of Yakima or any portion of Yakima County in the state's history.

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

93. However, the new Legislative District 15 does contain a HCVAP of greater than 50%.

94. The boundaries of the new Legislative District 15 were clearly negotiated and approved predominantly on the basis of race, in order to create a majority HCVAP legislative district.

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

96. The Commission cannot justify its decision to use race as the predominant factor in drawing Legislative District 15's boundaries under Section 2 of the Voting Rights Act.

97. The Commission could not have a strong basis in evidence to believe that it was required to create a new Latino-opportunity district to avoid liability under Section 2 because the Commission did not conduct a proper analysis of racial voting patterns or of what Section 2 required.

98. Two Commissioners cited the presentation from the UCLA Voting Rights Project as justification for their racially-segregated maps, but one advocacy group's demands alone are insufficient to create a strong basis in evidence that justifies sorting voters by race.

99. Even if there were a compelling state interest in creating Legislative District 15 using race as the predominant factor (which there is not), Legislative District 15 is not narrowly tailored to achieve that interest.

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100. The Commission did not perform sufficient analysis of race-neutral alternatives, including, for example, what percentage of Latino voters would be necessary to have the opportunity to elect their candidates of choice.

CROSSCLAIM

(Violation of the Equal Protection Clause of the United States Constitution)

101. Cross-Plaintiffs reallege and incorporate by reference the allegations in the above paragraphs.

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

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

104. The Voting Rights Act does not require a Hispanic majority-minority district in the Yakima Valley.

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

106. It did not serve a compelling interest because it was not required for compliance with Section 2 of the VRA, and therefore the Commission had no other compelling interest for sorting voters based on race.

107. Even if it was required for compliance with the VRA, it was not narrowly tailored because the Commission did not consider race-neutral alternative for VRA compliance.

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

109. By subjecting Cross-Plaintiffs to the effects brought on by unconstitutional racial classifications through a racially gerrymandered district, Cross-Plaintiffs have suffered injury.

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110. Cross-Plaintiffs have no adequate remedy at law other than the judicial relief sought here.

111. The failure to temporarily and permanently enjoin the conduct of elections based on Legislative District 15 will irreparably harm Cross-Plaintiffs by violating their constitutional rights.

INTERVENORS/CROSS-PLAINTIFFS' PRAYER FOR RELIEF

Intervenors/Cross-Plaintiffs respectfully ask the Court for the following relief:

1. Convene a court of three judges pursuant to 28 U.S.C. § 2284(a);

2. Dismiss the Plaintiffs' Amended Complaint in its entirety and with prejudice;

3. Declare that Legislative District 15 is an illegal racial gerrymander in violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution;

4. Issue a permanent injunction enjoining Defendants from enforcing or giving any effect to the boundaries of Legislative District 15, including an injunction barring Defendant Secretary of State from conducting any further elections for the Legislature based on Legislative District 15;

5. Order the creation of a new, valid plan for legislative districts by Defendant State of Washington that does not violate the Equal Protection Clause;

6. Appoint a special master if Defendant State of Washington fails to timely comply with this Court's order to redraw the legislative districts for the State of Washington;

7. Award Intervenors/Cross-Plaintiffs' reasonable attorneys' fees and costs incurred in this action in accordance with 42 U.S.C. § 1988, 52 U.S.C. § 10310(e) and any other applicable law or rule; and

8. Grant such other and further relief as the Court deems just and proper.

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DATED this 2nd day of November, 2022.

Respectfully submitted,

s/ Andrew R. Stokesbary

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Counsel for Intervenor-Defendants

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 2nd day of November, 2022.

Respectfully submitted,

s/ Andrew R. Stokesbary
Andrew R. Stokesbary, WSBA #46097

Counsel for Intervenor-Defendants

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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

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

Plaintiffs,

v.

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

Defendants.

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

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

Judge: Robert S. Lasnik

Date Action filed: January 19, 2022

Date set for trial:

Noted for: March 25, 2022
ORAL ARGUMENT REQUESTED

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

* * * * *

Remote Deposition of
Jose A. Trevino
July 16, 2021

* * * * *

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

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

REMOTE DEPOSITION UPON ORAL EXAMINATION OF

JOSÉ A. TREVINO

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

REPORTED BY:

LAKESIDE REPORTING
Jeanne M. Gersten, RDR, CCR 2711
Registered Diplomate Reporter
(833) 365-3376
Jeanne@LakesideReporting.com
Contact@LakesideReporting.com

Electronically signed by Jeanne Gersten (001-357-668-4110) 24b588ab-1d46-49ef-ab21-24f3f9b9ab69

A P P E A R A N C E S

FOR PLAINTIFFS AGUILAR, et al.:

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LEGAL TEAM ALSO PRESENT:

MOLLY DANAHY
CHRIS LAMAR
ASEEM MULJI
GRACE THOMAS
EMILY VILLARREAL

FOR DEFENDANTS YAKIMA COUNTY, et al.:

BRITTANY WARD
Attorney at Law
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* * * * *

EXAMINATION INDEX

JOSÉ A. TREVINO PAGE
By Ms. Harless 4

* * * * *

Electronically signed by Jeanne Gersten (001-357-668-4110) 24b588ab-1d46-49ef-ab21-24f3f9b9ab69

A No.
Q At the time you were appointed to be mayor of Granger in 2016, was the Granger city council majority Latino?
A Yes.
Q Why did you apply to fill the vacant mayor position?
A I didn't. I was appointed.
Q Okay. Why were you interested in being the mayor of Granger when you were appointed in 2016?
A I think what it was was that I had ran for mayor, and I was not elected. It was the -- It was another person, and that person quit. And so the council felt that since I was the one that ran --
And I guess I shouldn't say that because it's all assumption on my part, but I'm going to assume that they felt, "Well, he ran for it, so obviously he would take it. So let's nominate him." And that's just all assumption on my part.
Q In what year did you run as mayor and not get elected --
A 2015.
Q -- to that position?
A 2015.
Q And do you remember -- Well, I guess it would have been the incumbent, but do you remember who ran against

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you in the 2015 mayoral race?
A Well, there was actually four of us. There was me, the mayor then, his son-in-law -- the mayor's son-in-law, and then another. He was an unknown, but he's a professor at a college.
Q Do you remember any of those candidates' names?
A So the mayor at the time was Gary Anderson. His son-in-law who was on the city council was Bill Sharp. And then the professor was -- I always forget his first name, but his last name was Wheaton -- Charles Wheaton.
Q Why do you think you lost that election?
A Because it's a small community, and people like to spread a lot of rumors and lies; and the rumors were that I was going to fire all the white people in the city.
Q So there was a rumor circulating that you were going to fire all the white city employees working for the City of Granger?
A Yes, that was one of them.
Q What were some of the others?
A That I didn't know about budgets. That everything was going to stay normal. Nothing was going to change. That's kind of it.
Q Do you know who started the rumor about you firing all the white people in the City of Granger?
A No. No. It's laughable, though.

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A I said yes.
Q And if we look at the vote totals you received 2,849 votes; correct?
A That's correct.
Q And of the five candidates that are listed in the 2014 Yakima County clerk primary race, you received the lowest number of votes; correct?
A That's correct.
Q In the 2014 race you did not advance from the primary election to the general election; right?
A That's correct.
Q Janelle Riddle and Sarah Matheny had the top two vote totals and advanced to the general election; correct?
A That's correct.
Q Is Janelle Riddle white?
A I'm assuming she is.
Q Is Sarah Matheny white?
A I'm going to assume that she is.
Q Has Yakima County ever elected a Latino person as county clerk?
A I don't know.
Q Why do you think you had the lowest total number of votes in the 2014 primary for the Yakima County clerk position?
A Probably because it was a dirty campaign, and one of

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

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

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

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

A That's correct.

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

A It was about the domestic violence false allegation.

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

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

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

A Yes.

Q Which candidate was that?

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

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Q Why do you think you received the lowest number of votes in the District 3 primary race in 2018?
A Because the Yakima Herald-Republic decided to do hit pieces on me again.
Q What are you referring to when you say the Yakima Herald-Republic did hit pieces on you again?
A Again, talking about the 2005 false domestic violence allegation, and not clarifying anything, just putting it out there. You know, as human beings when you don't have answers, you fill it in with what you want, and unfortunately that's what was given to the voters that read that paper.
Q And the general election for the Yakima County board is conducted at large; correct?
A For District 3?
Q The general election for any seat on the Yakima County board.
A Oh, yes. Yes, I'm sorry. Yes, you're correct.
Q And all the voters in the entire county select the winner for a district seat; correct?
A That's correct.
Q And you've never run in a general election for a seat on the Yakima County board; correct?
A That's correct.
Q And you've also never run in a general election for

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any countywide seat; correct?
A That's correct.
Q In 2020 you announced that you were going to seek to fill the vacant seat on the Yakima County board left after the death of Norm Childress; correct?
A Yes.
Q And Norm Childress was the commissioner for District 3 of the Yakima County board?
A That's right.
Q Why did you decide to seek appointment to the vacant Yakima County board District 3 seat?
A I wanted to test the waters, to see what my chances were with the Yakima Herald. And they started in again, and they were going to do the same thing.

And beings that the 2018 election had some folks in there that had some background that should have been out there as well, and they refused to do that and only did it to me, that's what I was testing -- and it's exactly what they were going to do.
Q Who were the other candidates in 2018 that you think the Yakima Herald should have reported about?
A Well, I'm not going to say no names. All I'm going to say is that we met with the Yakima Herald several times to let them know if you're going to put something out about what happened in 2005, then you need to put -- clear

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

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

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

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

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

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

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

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

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

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

Q You're a Republican; correct?

A That's right.

Q And you're also --

A Conservative and Republican.

Q And you're also Latino?

A That's right.

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

A Right.

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

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

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

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

A That's right.

Q And because the Yakima Herald-Republic targets you

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as a Mexican Republican candidate?

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

A That's right.

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

A That's right.

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

A Yes.

Q What is the total population of Granger?

A It's between 42 and 43 hundred.

Q What is the source data for that number?

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

Q From the state of Washington?

A Yes.

Q Which state department?

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

Q Would you describe Granger as a small city?

A Yes, we're small.

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

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Nos. 23-35595 & 24-1602

IN THE 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,
and

JOSE TREVINO, ISMAEL G. CAMPOS, and State Representative ALEX YBARRA,
Intervenor-Defendants-Appellants

On Appeal from the United States District
Court for the Western District of Washington
No. 3:22-cv-05036
Hon. Robert S. Lasnik

PLAINTIFFS-APPELLEES' SUPPLEMENTAL EXCERPTS OF RECORD VOLUME 4 OF 5

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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,	C22-5035-RSL Seattle, WA June 7, 2023 8:30 a.m. TRIAL - Day 4
BENANCIO GARCIA III, Plaintiff, v. STEVEN HOBBS, in his official capacity as Secretary of State of Washington, et al., Defendants.	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

Kreidler, et cetera, et cetera. Thank goodness we don't have anything from Sequim or Puyallup to hear about.

Okay. Mr. Stokesbary, this is your witness.

CROSS EXAMINATION

BY MR. STOKESBARY:

Q Let the record reflect, even another local counsel has mispronounced the beautiful master-planned community of Tehaleh, on the southeast Pierce County plateau.

THE COURT: Wow, that's tough. And Mr. Fain can give up the idea of ever running statewide, after all the: I don't know this, and I don't know where that is, in the map yesterday.

MR. STOKESBARY: Well, good afternoon, or sorry, I'm not going to make that mistake again. Good morning, Your Honors.

THE COURT: Do you have that written down?

MR. STOKESBARY: I don't. Dad brain.

Q Mr. Graves, as you know, you've been called to testify on two cases being heard together, Soto Palmer v. Hobbs, and Garcia v. Hobbs. I know we know each other, we'll get to that in a second. But I'm Drew Stokesbary, I represent the intervenor-defendants in Soto Palmer v. Hobbs. I also represent the plaintiff, Mr. Garcia, in Garcia v. Hobbs. But as I said, fair to say we know each other?

A Yes.

Q Do we know each other fairly well?
A I would say, yes.
Q But have we communicated about your testimony here today?
A No, we've been really clear not to do that.
Q You mentioned you're a lawyer, formerly a commercial litigator at Perkins Coie. Did you do pro bono work as well?
A I did.
Q What kind of pro bono work have you done?
A Spent a lot of time representing foster kids in trial courts through our King County court-appointed special advocate program. And I, myself, have been a foster parent as well.
Q At some point you decided to run for the state legislature, correct?
A That's right. I ran for state representative in 2016.
Q Why did you decide to run for the state House?
A It sounded fun, and challenging, and interesting, and I thought I could make a difference.
Q Did you have any mentors who inspired you to run, or whose example you tried to emulate when you got elected?
A I did. We're fortunate enough here to have some very, very good people that we can rely and lean on for doing this very funny thing, running for office for the first time.
Q Anybody in particular?
A Slade Gorton was somebody who was really instrumental. He

challenge the map on the grounds of the VRA.
Q Was it your team's goal to insist on a district that was just slightly 50 percent, but did not perform for Latino candidates of choice?
A Could you say that one more time?
Q Was it your goal to push for a district that was just over 50 percent, but did not elect candidates of choice for the Latino community?
A No. That was not our goal, no.
Q Was it your goal, going into this meeting, to get a district that you believed was truly VRA-compliant, a true Latino opportunity district?
A That was our first goal. But it became very clear, very quickly, that was not going to happen.
Q As often happens in negotiations, you have a Plan B. What was your next best objective?
A Our next best objective was to, again, offer to the Republicans the opportunity to draw this district the way they wanted, which we assumed would be a nonperforming, noncompliant district.
Q When you say "nonperforming, noncompliant," what do you mean by that?
A Something that would not elect Latino candidates of choice, and therefore not be Democratic performing. Because we knew, and heard, that the Republican commissioners did not

want to draw a district that was Democratic performing, and, therefore, allowing Latino voters to elect a candidate of their choice.

MR. HUGHES: Objection, Your Honor. Hearsay.

THE COURT: Objection sustained.

Q Ms. O'Neil --

JUDGE VANDYKE: Can I ask a question? Because I'm a little confused, factually. So I understand what you're saying, that was the thought process going into this meeting. But if the plan had gone the way you hoped, those maps would have only become the maps if three or four commissioners had voted for them. So did you plan to -- was the plan that the Republicans would draw the maps, then the commissioners, Democratic commissioners, would vote for maps that they knew were not VRA-compliant?

THE WITNESS: Yes.

Q I'd like to show you admitted Exhibit 352. Do you recognize this document?

A Yes.

Q This is a Teams chat with, it says, four participants. Who were those?

A It appears to be Paulette Avalos, Matt Bridges, and I can't see the other name, but my recollection is that it would have been Adam Hall.

Q The first fully visible text message from this document is

organizations have you involved yourself in, in the community?

A Volunteer organizations. That is, I've been an advisory -- member of the advisory committee to the Chief of Police in Pasco, since '94, '96, when we established that advisory role under Chief Dennis Austin. And I served as volunteer for three different police chiefs.

Q Can you tell us about some more of your community involvement? I know you mentioned I was a commissioner for the Commission on Hispanic Affairs, but were you one?

A Yes. Thank you. I'm just thinking about 30 or 40 years of things that I had done. It's quite a lot. So, yes, I was a commissioner. I served two terms under Governor Locke, and Governor Christine Gregoire. So we were only allowed to serve for two terms. I completed both of my terms.

I was also a chairman for the Tri-Cities Community Health Center. Everybody knows La Clinica, in Spanish. I also served for the City of Pasco in various capacities, not only as an advisory committee for the chief, but also as a planning commission. Also the downtown Pasco development authority, which is a quasi-judicial organization that looks at downtown revitalization, and looks for economic development.

I also -- I'm one of the founders of the HLLO. That's Hispanic Latino Legislative Organization, known as LCA,

Latino Civic Alliance.

Then I also -- I'm one of the founders of COPA, Colima/Pasco, collaboration in friendship association. We have the state of Colima in Mexico, and the City of Pasco, which was drafted, and signed an agreement by the Governor of Colima, and the Mayor of Pasco, and big things are coming to Pasco because of that.

And we're planning a trip to Colima to take about 27 tribal members from the confederation -- the Colville Confederation of Tribes. And they are going to perform Native American dances in Colima. First time ever. And I'm proud to say that it is from Washington State, the first time ever performing in Colima. And so we expect to have some reciprocity, maybe have some dancers that are Hispanic, to come to Washington State.

Q That sounds wonderful. I understand you're also part of LULAC; is that correct?

A Yes. I'm one of the founders of LULAC, in the Tri-Cities. We started -- we founded a council in 2015. I was a member. And by 2016, I became the president.

Q What was one of the things that spurred on your involvement in LULAC, if you could tell us about that?

A Sure. LULAC, every council in Washington State chooses to do what they want to do, as far as the volunteers that get together to figure out what are the areas that the community

And they take turns to welcome us and make us feel like we're number one. This is your government. And this is a really fantastic experience for our community.

Q You said that was during a Latino Legislative Day?

A Yes, um-hum.

Q In your experiences, and in your opinion, based on those times that you've been speaking with elected officials, were they responsive to the needs of the Latino community in Central and Eastern Washington?

A Well, it's way different when you come to Olympia and everybody shows the best, who they want to be.

Then when you are in your area, whether that be Wenatchee -- this is the pattern that we hear from all the eastern side -- Wenatchee, Yakima, Othello, Moses Lake, Pasco, Sunnyside, Granger, all the way to Yakima, and even Ellensburg. So the concern is that the legislators do not listen to the Latino concerns.

Q To be fair, do some elected officials say one thing, then do another?

A Exactly.

Q So I hate to do this, but I'd like to talk about one of your colleagues, or someone you may know. Do you happen to know Senator Nikki Torres?

A Yes, I do.

Q Do you work in any capacity alongside Nikki Torres?

Q Okay.
A Then when she is -- well, she kind of resigned. Then she went ahead and ran for Senate. And in this case, we found that she was running as a Republican. And right there, we were kind of, like, disappointed, and thought that something happened. And she has a right to change, and we respect that.
Q So why were you disappointed, if you could speak to us about that?
A Well, I know it's kind of like generalizing. But typically what Latinos -- although we're not a monolith, a voting block, to say, we all vote Democrats, we have some that vote Republican. But a great number of, I would say the majority vote for Democrats, because they think that they best represent the Latino concerns. And so a majority of Latinos vote. Not everybody, but a majority.
Q Did you have occasion to speak with or interact with the prior legislator in that District LD 15? I think it was Senator Honeyford?
A Yeah. I do have an experience that is quite -- a little -- I try -- basically the president of Mexico, Vincente Fox, was going to visit Washington State, and chose to stop in Yakima. And we met at a farm, near Yakima. And there we had 50, 70, a lot of people, waiting for him, President Fox to arrive.

of the reasons for your disappointment in Senator Torres running as a Republican in that district?

A Most definitely, yes.

Q So I'm going to move on to a different topic, and I'd actually like to speak about Legislative District 15, still. But in your opinion, and based on your interaction in the community, and based on you knowing this community as much as you do, from having lived there, do you think that Yakima and Pasco have similar interests, or similar ties, or similar values?

A I think so. I remember -- I try to compare Phoenix and Glendale. I lived in Glendale back in '71. And Glendale and Phoenix were two different places. And now they're blended into one. And I see Yakima and Tri-Cities, not as fast as Glendale and Phoenix, but I see that eventually they're going to be close. If you look at the lay of how Yakima, and the Latinos depend so much on the economic conditions of working for the farms in the areas of, you know, the hops, the apples and lots of others -- dairies. And if you go from Yakima and you move to the east side, and you can see that this is happening as well, as far as dairies, apple orchards.

And when you come from the Tri-Cities, as soon as you drive on 82, you start seeing a lot of -- because I've seen that for many years, where I saw five, ten mobile homes. Now there are like 40 mobile homes right next to a farm. And

there are just a lot of Latino families that live there, and work there, and provided that there are some that are -- that have to stay the whole year, and other ones that are seasonal.

But these communities continue to grow. So there's a lot of similarities, as far as labor, and the types of jobs that both areas do.

There's similarities also in the religious aspects. There's a great number of Catholics in that -- there's two diocese that are divided by the Columbia River. One is the Spokane diocese, the other is the Yakima. But basically they're all Catholics; great numbers. I played for my church, I directed a choir for Spanish music for the masses, for like 18 years, until I thought that was enough for torturing the people with my music, and I took a break.

And we used to have 700, up to 800 people in every mass. And you're talking about three masses every Sunday. So it is a lot of folks in Yakima. I also, when I lived in -- because I live in Yakima, and I also work in Toppenish. So when I lived in Yakima, I also joined the San Jose, it's another church. And the late Baho Herrera (phonetic), is a real good friend, he was director of the choir. So I got to see the masses packed with a lot of folks. And seeing those big numbers, yes, we have a lot of things in common.

Q And I'm born and raised in Yakima, so I'm going to try not

to mispronounce any of the cities. But if I do mispronounce them, it's going to be because I'm nervous.

So as you drive down 82 and you go from Yakima, to then Wapato, then you go to Toppenish, and then you go -- you pass Zillah. Then you go on to Granger. And what comes after Granger? I think it's Grandview, then Sunnyside, and Process. And as you go up to Pasco, and then you go up Taylor Flats Road, and up 395, what is going to tie those areas all together? Do you find that those areas are similar enough?

A Yes, I do. Like I said, the labor that we provide, the Latino communities provide to all the farms, it's what keeps us -- it's what connects us.

Q Did I miss Sunnyside? I apologize.

JUDGE ESTUDILLO: You reversed it. You went from Granger to Grandview.

MR. MORFIN: I apologize, Your Honors.

Q I do want to ask you very directly, then. Do you think that Yakima and Pasco should be in a Legislative District together?

A I think that would be good. That would be great. With all respect to the Redistricting Commission, if they would have done a better job to make sure that we're not split in the community, that we bring it -- maybe over here. But in the future, if we look at the two big areas, which is Yakima

and the Tri-Cities, that would be ideal for representation.

We do have lots of folks that work in the farms, but we also want somebody to represent us in Olympia.

Q So considering the history that you're familiar with, and you actually lived it, so I appreciate -- let me take a second, I appreciate you for all of the work that you've done in the community.

But considering the history that you're familiar with in the Yakima Valley and Central and Eastern Washington, when considering the size of the Latino population, and considering the amount of Latino representation there, in terms of Latino-preferred candidates, do you think that there's a fair amount of Latino representation in Central and Eastern Washington?

A Not in that area. That's exactly what we need. And that's why we keep asking for ways to promote folks to get involved, and inform themselves, and run for office.

Q How does it make you feel -- and we're going to get back to that in a second -- but how does it make you feel to know that we are fighting so hard here in court, on either side, for there to be a district in Central and Eastern Washington, where Latinos are able to choose a candidate?

A Well, it makes me feel that we have a long ways to go.

Q So does representation matter?

A Yes, it does.

(speaking Spanish) small steps take you far.
Q Can you interpret that for the court reporter?
A I just did. I just did.
Q Sorry about that.
A With my teachers, I have to be very careful, so they can understand both. Small steps take you far (speaking Spanish). So what we've been doing is doing advocacy to make changes, and this requires a lot of learning from our communities, especially with a legal system, with the electoral process, it's not as simple.

So the learning, and also that's -- that's the internal. The external will be sometimes they have fear, because they work at an area where they're not supposed to be talking about politics, especially about some -- either political party. And they know that their job may be in jeopardy if they get too vocal, or start talking about, you know, political issues or candidates.

So Latinos tend to shy away, in sort of like a self-preservation.
Q Does change seem to take great effort?
A Say that again.
Q In your opinion, based on all that you've done, does change take great effort?
A Yes. Yes. I just --
Q And is it slow?

we should try before, you know, in conversations like with the City of Pasco, in 2017, also had an at-large system.

But we were in conversations with the city and their officials, and with the guidance of the U.S. Department of Justice, that provided a moderator for us to meet and work things out, we were able to negotiate at-large. And in the end, they ended up with one at-large, and six district based, which it was the best we could do in 2017. The WVRA was not in existence yet.

Q So that sounds like you were able to -- and, I don't want to mischaracterize it, but then that one was a little bit more outside of the court, that it got resolved, that last case that you were talking about?

A Yeah. We did before. We didn't have to go to court, the city negotiated.

Q What is the significance of Latinos in the Yakima Valley having an ability, in Legislative District 15, to vote for their preferred candidate? Why is that important to you?

A Well, I think that because when I look at the Latino community, I don't see differences between Yakima and the Tri-Cities. We're all kind of in the same boat. I think we need representation in Olympia. And so someone that can take the issues that really affects the farmworkers, even the farm owners too, because what's good for the farmworkers is good for the farm owners.

Q That's a good point. What do you think will happen, if Legislative District 15 and the Yakima Valley, doesn't allow Latinos to elect their candidate of choice?
A Then we will have to look at other recourse of actions, to see how we can help.
Q So I'd like to switch topics, and I'm going to ask you specifically about registering to vote. Have you heard of same-day voter registration?
A Yes, I have.
Q Did you have any issues registering to vote, or do you?
A Not at all.
Q Did you receive your ballot by mail?
A Yes, I do. Every year.
Q Do you have any problems with that?
A No.
Q Do you get your ballot materials in English and Spanish?
A Both. It's being translated. It was not easy to get to that point.
Q Can you speak on that?
A Yes. So a few years back, we were trying to have things in Spanish, and we were -- the commissioners rejected us. And then we brought some assistance, from a lawyer from DC, and they helped us to navigate through that. Because, again, you need some experts. And, finally, because of the number, the percentage of Latinos, right now we have a high

percentage, it's like 54, officially, because in reality, we're like 60 or 65. But we qualify to have funds to pay for a bilingual outreach. And these persons started making some changes, and having things in Spanish. And pretty soon the whole state was looking into, there are some areas where we need to have the ballot in both Spanish and English. And it's been a few years now that we get it in both languages.

Q That's great. Thank you for that.

So when you get your ballot, do you have to request it, or does it just happen automatically, do you just get your ballot?

A If you are a voter registered in our county, in Franklin, you get your ballot automatically every year.

Q How do you return it?

A You just -- it's so wonderful, because it's been two or three years that now you don't have to buy a stamp. It's just, boom, you're done.

Q Would you say that the voting in Washington is pretty easy for you?

A Very easy for me, yes.

Q Do you think that other members in the Latino community find it as easy as you do? And why or why not?

A Well, if you ask me, because I'm -- in my role as being involved in community issues, and advocacy for the community for the past 40 years, and being the state director for

LULAC, the Legal United Latin American Citizens, trying to keep up with all the different candidates, so to me it's easy.

But if you ask me about the rest of our community, I can say, no, it's not easy. It goes back to knowing the language. Even English-speaking folks, they find it hard to read through the ambiguity of the initiatives, and reading through the candidates, unless you have a friend that says: Yeah, vote for that one. It's really not easy to navigate.

So Latinos that lack the language, lack the knowledge, and again have the extra fear of, maybe I should not be involved in this. So, yeah, they shy away. And it's really difficult, more difficult, because they're not utilizing time to learn that.

Q I appreciate your insight.

I'm going to switch topics now, again. I understand that you know a certain judge, Judge Salvador Mendoza, Junior?

A Yes. Yes.

Q Do you remember him running in an election? And it's okay if you don't remember. But do you remember him?

A Yeah. Well, I met a young Salvador Mendoza, when he was a lawyer. And I interviewed him for one of my Spanish radio programs that I have, to inform the community. And he came. And I learned a lot, and became really, you know, really

Central Washington are Democrats. There's plenty of Republican Hispanic voters as well, right?

A Yes.

Q So I just want to confirm that it is not your testimony that Hispanic voters, who are Republican, or Hispanic individuals who are Republican, don't care about, or don't want to help the Hispanic community?

MR. MORFIN: Objection, Your Honor. I think it misstates the testimony.

THE COURT: Don't worry about the beginning of the question, just the proposition. Would you say that a Latino voter, who was Republican, could still care about the Latino community?

THE WITNESS: Um, I think that trying to explain what someone that identifies, or that -- identifies with the struggles of the Latino community, does not necessarily have to be Hispanic, it can be white, it can be Hispanic. So there are Hispanics that don't care about our community. There are Anglos that don't care. Any group.

Q But that's not a function of whether or not they are Republican, is it?

A Well, the Republicans tend to be more anti-immigrants, anti-unions, anti-Latinos.

Q One other question for you, just to clarify a couple questions that you answered earlier about Pasco and Yakima.

The way I interpreted what you said, is that Pasco and Yakima are on track to become more of a united community, but perhaps they're not one community here today. Is that your understanding? Or is that how you would explain it?

A Well, I think that we share a lot of commonalties in areas of labor, like I mentioned, and religion. And so those two areas are very strong.

Also, I imagine housing, too, because mostly of our folks are living in conditions that, you know, is really very difficult. And in Yakima and also in the Tri-Cities, because many, many different reasons, but it has to do with improving the conditions, for them to be working and earning salaries, that can afford them a better way of life. And we believe that if we joined efforts between Yakima and Tri-Cities, a state representative such as yourself, but in our area, could advocate for us.

Q Totally understand, sir. And I do just need to clarify, for the record, I'm a state representative; I would have a state senator that would be very upset if he heard I got a promotion. That's all the questions I have for you, sir. Thanks for being here.

THE COURT: Thanks, Mr. Stokesbary. Ms. Sepe.

MS. SEPE: No questions.

MR. MORFIN: One question, if I may. And I typically don't redirect.

REDIRECT EXAMINATION

BY MR. MORFIN:

Q Mr. Portugal, are there cities in between Yakima and Pasco?

A Yes.

Q I think we touched on a lot of them earlier. So from your experience, from driving through there and knowing the community, are there large Latino populations in those cities, between Yakima and Pasco, and can you speak to that?

A Yes. I think that if you look at the numbers, Granger has over 90 percent Latinos. And so that's really high. And if you look at Wapato, you look at Toppenish, Sunnyside, all those, they have big numbers of Latinos.

So that's why I see this commonality of not only Yakima, but all those towns have a lot of working folks that provide labor for the farms and the dairies.

Q Thank you, Mr. Portugal. We really appreciate your time here today.

MR. MORFIN: I'll pass the witness.

THE COURT: Thank you, Mr. Portugal. Do you have any questions for us?

THE WITNESS: No. No. Thank you. I really appreciate the opportunity to come and share some of my perspectives. Gracias.

THE COURT: Later on if you could tell me how to say

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

A Yes. Certainly more than most demonstration districts.

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

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

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

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

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

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

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

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

A In those elections, Hispanic voters continue to show moderately cohesive voting, for Hispanic candidates. So *Gingles* 2 looks quite similar. But the behavior of Anglo voters is much less clear. The pattern is quite different than what you see in the general elections. So it's a different -- appears to be different.

Q Is this difference amongst how white voters vote, in nonpartisan elections, does that undermine your conclusions on the third *Gingles* factor?

A No.

Q Why not?

A Well, it's -- remember, my view is that most of the effect here is partisan. But that there is -- remains an effect of ethnicity, as well. You see that effect, both that partisan effect, and the effect of ethnicity, in these nonpartisan elections, to a lesser extent. In part because partisanship is on the ballot here, although it may be in the air, as we know with recent elections.

Secondly, the elections at hand are partisan elections. And so I think the pattern in partisan elections, at least for the threshold *Gingles* factors, outweighs what we see here in the limited set of nonpartisan elections.

MR. HUGHES: That's all I have, Your Honors. Thank you so much, Professor Alford.

THE COURT: Mr. Acker?

Q Thank you very much. No further questions.

THE COURT: And, yes, Mr. Gaber?

CROSS EXAMINATION

BY MR. GABER:

Q Good afternoon, Dr. Alford. How are you?

A Very good. Good to see you again.

Q We've met before, right?

A And we'll meet again.

Q We're not usually in this same sort of situation. So this is a nice change.

I just have a few questions for you. And I'd like to pull up your report, which I think is Exhibit 601. And if we could turn to Page 14, which I believe will come up on the screen in front of you, in just a moment.

Now, Dr. Alford, this is -- Table 5 here, this is the table where you show the difference in the support that white voters give to candidates, depending on the race of the Democratic candidate; is that right?

A Yes.

Q And the contests for the Legislative District 15 would be partisan contests, right? That's how those elections will go?

A That's correct.

Q And the table shows that when the Democratic candidate is Hispanic, or has a Spanish surname, that white voters give

just 15.98 percent, on average, of their votes to that Hispanic Democratic candidate, right?

A That's correct.

Q Now, there's been testimony in this case that sort of the Commission, using -- they had a metric that was the 2020 treasurer's race, and I'll represent to you, if you don't know, that that I believe featured two white candidates, so a white Democrat, and white Republican. Does that sound right to you?

A I have no recollection of that contest.

Q Assume that to be true. I think the judge would have told me if that was wrong. And that the result of that race was 53 percent for the white Republican, and 47 percent, roughly, for the white Democrat.

Now, there's also been testimony, from some analysis, showing the turnout among Hispanic voters in the area is lower than turnout among white voters; and particularly so, in midterm elections. Does that seem right, as a general proposition of political science?

MR. HUGHES: Objection. That misstates what the evidence has been at this point.

THE COURT: Go ahead, rephrase the question.

Q Assume for me turnout is lower, among Hispanic voters in the area. If you have a district that starts out at 53/47 in favor of the white Republican candidates, or the Republican

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

Q And why does that matter to you?

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

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

A No.

Q What did you find?

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

Q Two elections?

A Four elections.

Q My apologies. Four elections.

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,	C22-5035-RSL Seattle, WA June 6, 2023 8:30 a.m. TRIAL - Day 3
BENANCIO GARCIA III, Plaintiff, v. STEVEN HOBBS, in his official capacity as Secretary of State of Washington, et al., Defendants.	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

related to the voters, and how they are today.
Q So would it be fair to say that your analysis of white-block voting is only based on an estimate of white-voting behavior in one election?
A The one case we have available, and I think -- yes, the other extension that I did was also, you know, prior to when we talked in December, was looking at just Hispanic cohesion related to the U.S. Senate race. So to give you a complete answer, we also testified about that this morning.
Q I'll ask the question again. Your analysis of white-block voting is only based on an estimate of white-voting behavior in one election, right?
A It was, yes.
Q Dr. Owens, in your report you said that, "In a study of racially polarized voting, I find estimates of Hispanic voter preference for candidates from the Democratic Party differed by 30 percent or more from SD 13 to SD 14 or SD 15," right?
A Yes.
Q And to be clear, when you say "SD," you're talking about a Legislative District, right?
A Yes. In my first part, getting kind of limited knowledge of Washington, but I put the SD to mention Senate District. So we knew there would be legislative districts as well.
Q So you're okay if I say "LD"?
A I'd love it, yeah, that's great.

of your analysis any differently or any less?
A No. I did not down-weight any one in the report.
Q Now, let's look at Table 1 in your report. So this will be Exhibit 1001. And Table 1 is on Page 9.
And would it be fair to say -- we looked at these earlier, with intervenor's counsel. But this is, these are your point estimates for Hispanic voting for Democratic candidates in select elections, right?
A Yes.
Q Now, let's start with the 2020, insurance commissioner election. In enacted LD 15, Latinos voted at 79 percent for Kreidler, right?
THE COURT: Kreidler.
A Yes. The estimate is there, with the margin of error showing 75.7 to 82.3.
Q Now, with that margin of error, you would say that Latinos voted cohesively for Kreidler in the 2020 insurance commissioner election, right?
A Yes.
Q Would you also say that Latinos, in the previous LD 15, also voted cohesively for Kreidler, in that same contest?
A Yes. The margin is a little higher.
Q Now, in enacted LD 14, did Latinos vote cohesively for Kreidler, as shown in Table 21?
A Yes.

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

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

MR. HERRERA: You have two Texans here.

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

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

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

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

A In 13?

Q In enacted LD 14.

A In 14. Yes, they did.

Q And same thing for previous LD 14.

A That's correct.

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

out of 11 elections?
A One, in particular, when I made that -- in writing it, is calling to the votes that you see for SD 13, one as previous and enacted, and also calling into the votes there with the lieutenant governor. I think in this case it's a range, the context of the election between the Superintendent of Public Instruction, like you said, nine out of ten, but the two alternatives, as well as a different -- it shows me that the Hispanics are not holding the same partisan preference, across all of these geographic areas. There is variation that the model is showing when we look at it district-by-district.
Q Now, you said that Latinos are not holding the same partisan preference. Are they voting cohesively, though?
A In some parts of the district, yes. In some parts of the Yakima Valley, that's true.
Q So basically the parts of the Yakima Valley that don't include Lincoln and Kittitas County, right?
A Yes, as we talked about before.
Q And most of Grant County, right?
A Um-hum. Yes. And so I can take that -- we include that because of Grant County.
Q Okay. You keep bringing up the partisan caveat, I think. And so now I kind of want to walk through some of these, again. So in the 2020 Commissioner of Public Lands, would

you say that Latinos voted cohesively for Franz in the enacted LD 15?
A Yes.
Q Latinos also voted cohesively for Franz, in that same contest, in the previous LD 15, right?
A Yes.
Q Okay. Now, for State Auditor 2020, would you say that Latinos voted cohesively for McCarthy in enacted LD 15, previous LD 15, enacted LD 14 and previous LD 14?
A They did.
Q And on the State Treasurer 2020 race, would you say Latinos voted cohesively for Pellicciotti in enacted LD 15, previous LD 15, enacted LD 14, and previous LD 14?
A Yes.
Q Now, on to State Attorney General 2020. Would you say Latinos voted cohesively for Mr. Hughes' boss, Mr. Ferguson, in enacted LD 15, previous LD 15, enacted LD 14, Land previous LD 14?
A Yes. The main reason why, is these margins of error all overlap up and down the ballot, in each of their groups.
Q So there for Ferguson, on the four sections I just mentioned, those are all cohesive, right?
A Yes, they're higher and higher.
Q Now, on to Secretary of State 2020 race. Would you say that Latinos cohesively voted for Tarleton in enacted LD 15,

previous LD 15, enacted LD 14, and previous LD 14?
A In this case, largely, yes.
Q Is that, "yes"?
A Correct.
Q And for governor 2020, would you say that Latinos voted cohesively for Governor Inslee in enacted LD 15, previous LD 15, enacted LD 14 and previous LD 14?
A Yes. Just all the numbers, again, overlapping with the previous elections.
Q And now on to the President 2020 race. Would you say that Latinos voted cohesively for President Biden in enacted LD 15, previous LD 15, enacted LD 14 and previous LD 14?
A Correct.
Q And now on to the 2018 U.S. Senate race, would you say that Latinos voted cohesively for Cantwell in enacted LD 15, previous LD 15, enacted LD 14 and previous LD 14?
A Yes, I still do. And the only variation that you continue to see there is just the Senate support is -- again, it's a little bit smaller, but continues to be overlapping margins of error. And that means to me it's not statistically different.
Q When you say "overlapping," overlapping with what?
A The highest area of this margin of error, and the lowest of the others.
Q Right. But what other margin does that -- are you saying

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

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

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

A It's consistent, yes.

Q But are Latinos cohesive?

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

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

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

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

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

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

Latinos voted cohesively in LD 14 and LD 15?
A Yes.
Q But for that election for Reykdal's opponent, you don't count that toward cohesive Latino voting in your analysis, right?
A No. Because right now, what we're talking about here is -- the title of the table is voting, yeah, for the Democratic candidate. And it also deviates from the pattern.
Q Okay. Do you agree that your Latino-vote-cohesion results are substantially similar to those found by Dr. Collingwood?
A Yes. I think in some cases, they are quite similar. They have overlapping margins of error.
Q Now, in your deposition in December, you told me that you did not do a study of Dr. Collingwood's full analysis, right?
A Correct.
Q Okay. You also told me, in your deposition, that you did not intend to conduct a study of Collingwood's report, and that such a request had not been made yet, right?
A Can you be more clear about what the study would be? Yeah, I mean, additional study. I think still generally I would say it's okay, but if there's a particular specific spot.
Q I think I just -- well, can we go to Page 106 of the deposition?
And do you see on, starting on line 10, I said, "Okay.

MR. HERRERA: I pass the witness.

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

CROSS EXAMINATION

BY MS. FRANKLIN:

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

A Good to see you again.

Q Good to see you, too.

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

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

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

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

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

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

we said, most elections, the Hispanic candidates, when it's a white Republican and a white Democrat, are selecting the white Democrat.

Q Generally speaking, when non-Hispanic white voters vote, did their votes overwhelm the preferences of Hispanic voters, generally speaking?

A I didn't use that as part of my analysis, in the first report.

Q But do you have any reason to believe that that's not the case?

A No.

Q Okay. Now, let's turn to the last page of your original report. We were just looking at it, admitted Exhibit 1001, and we're on Page 19 of the PDF.

So I have a couple other questions about the sentence we were just looking at a few minutes ago. The last sentence you wrote, "To the extent possible, we can also say that SD 15 was created to intentionally include as many Hispanic Democratic voters from Benton County as possible."

So in reaching that conclusion, did you speak to any of the commissioners?

A No.

Q Did you speak to anyone else involved in the redistricting process?

A No. I was separate.

has only token opposition against it, this shoestring campaign, that election might not tell you too much about what voters would prefer in a fair fight. Would you agree?
A It is contextually different. But what we still have ahead of us is knowing the partisanship of the candidates.
Q Sure. So at the time of this supplemental, when you drafted the supplemental reports, were you aware that Senator Torres had previous experience in an elected office, before she ran for that position?
A I would think; at the time, I can't recall. I do know that she has had that.
Q At the time, did you know that Lindsay Keesling did not have any prior experience in elective office?
A We discussed that. She had not.
Q And at the time you submitted your first supplemental report, were you aware that Lindsay Keesling was a write-in candidate during the August 2022 primary election?
A Of the primary? No. When I wrote the report, yeah, we talked about that.
Q So you didn't take her write-in status into account, in preparing that report, right?
A No, because she qualified for the election.
Q And at the time you submitted your supplemental reports, were you aware of how much -- or let's take your first supplemental report. Were you aware of how much Lindsay

Keesling and Nikki Torres had spent in that race?
A No.
Q Okay. Let's take a look. Can you please pull up the information about these candidates from the website? This is not an exhibit, but information that appears publicly on the website for the Washington Public Disclosure Commission.
If we scroll down to the bar graph to campaign expenditures. Let's take a moment to do that.
Can you tell me what Nikki Torres's total expenditures were. I think if you keep scrolling, there's a table.
A $94,000.
Q What about Lindsay Keesling's?
A Over $4,000.
Q So Senator Torres outspent Ms. Keesling by over 20 to 1, right?
A She spent more.
Q So would you agree that Lindsay Keesling was at a significant disadvantage in the November 2022 race?
A In this factor of measure, yes.
Q How did that factor into your analysis?
A It did not.
Q So when an experienced, well-funded candidate trounces a write-in candidate, by outspending them more than 20 to 1, do you really think that really tells you much about what certain classes of voters prefer, more broadly?

Q Tell us how your retention in 2021 came about.
A I originally received an e-mail from Lisa McLean, I believe it was July 31st of 2021, and asked to set up a phone call. We had a phone call a few days later, I believe, Monday or Tuesday of that week; so 1st or 2nd of August. And discussed the need for a voting-rights analysis to be done, and advise the Commission. We had a very good call. I felt that they would be reaching back out to me and offering me a position.

I was, at this time, fielding a lot of calls. Every state was redistricting. And I was doing a lot of other consulting, and -- but ultimately I didn't hear back from Ms. McLean.

Q Did you ever come to learn why?
A When I was ultimately hired, I was hired by a different, but related, entity, the Washington Senate Democrats, who represented a commissioner. And I asked that question, I said, "Oh, I thought I may be working for the Commission overall." And they were explaining the structure. And they suggested there was not political support from the Commission, as a whole, to have a voting-rights analysis. And so Commissioner Walkinshaw took it upon himself to initiate that process.

Q Did you understand the scope of your work, to focus on the legislative plan?

A That's correct.
Q Before we get into what you did and the opinions you came to, a little bit of background. The electoral situation in the State of Washington is such that there's a Legislative District, there's a Senate District, and within that, there's two House members elected?
A Yes.
Q What effect, if any, does that have on voting rights?
A Well, at-large nested districts, I've seen this in a lot of states, some counties have it as well for multimember districts, as we call them. Essentially those are diluted. It makes it harder, if there are two representatives representing a large area. From the perspective of local representation, we might think that it's better to have two subdistricts, such as many states do. Not all states have House districts nested as multimember districts within a Senate seat. Many have their own House boundaries. And so just as a starting point, it's a bit more difficult to gain representation, when you have to be nested within a larger district.
Q All right. So when you -- after you were retained and paperwork was straightened out, what did you get to work doing?
A I immediately wanted to get data for the entire State of Washington pulled together. This included census demographic

Commissioner Walkinshaw, and his team, decided just to present a slice from 2012, a slice from '20, then that little chart I had that said there was consistency.

Q Just to finish off the full analysis, what does the next election shown on the next slide?

A The presidential, I believe.

Q I think you have it here.

A This is the Governor's race. But then the next one is the presidential, Biden/Trump.

Q Based on this, were you able to conclude whether or not the Latino community in the Yakima Valley was politically cohesive?

A Yes.

Q What types of candidates did they prefer?

A Well, we found, across all of the elections, that there was a very similar rate of cohesion, somewhere around the 70 percent range, of Latinos voting together for candidates of their choice. In these elections that I analyzed, those were candidates running as Democrats.

Q And were you able to also determine the types of candidates that the white majority was supporting?

A Yes. As you can see here, on the left side of the screen, in every single chart, in every single election we ran, there was 70 to 75 percent cohesion among whites, for Republican candidates. So these two groups were voting in opposite

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

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

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

MR. DUNN: It was produced in January.

THE COURT: Have you had it since January?

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

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

Q What is shown in Exhibit 417?

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

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

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

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

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

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

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

A Yes.

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

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

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

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

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

uncontested races, or unfunded candidates, it's because those elections are not winnable for that side.

Q We've heard a bit about BISG. First, can you tell us what that acronym stands for?

A BISG is --

MR. TORCHINSKY: Objection, Your Honor. Nothing in any of Dr. Barreto's reports or materials submitted in this case, refer to or discuss BISG at all.

THE COURT: Objection overruled. Go ahead.

A BISG stands for Bayesian Improved Surname Geocoding; BISG for short. And it is a technique that I commonly use when preparing voter files for ecological inference analysis.

Q Where did it come from?

A It came from the health sciences, originally. Public health scholars and practitioners want to get as much information on the race and ethnicity of patients, as possible, because we know in those fields that there are a lot of racially, and ethically, and genetically, markers, that are related to disease and other health factors.

And so those scholars, probably about 20 years ago now, pioneered this effort to use the last name, the surname of a person, as well as their neighborhood, where they live, to provide reliable understandings of their race and ethnicity. It has been tested, validated, and proven, and eventually grew out of the health sciences and started to come into

precincts, there is about 1,500 voters. So when you aggregate it, you're allowed to make one mistake in each direction, because they, on average, cancel out and match. If you were running it on six people, or so, if you make one mistake, that's a 16 percent error. So luckily with voter files, we're often dealing with thousands, if not hundreds of thousands of names.

MR. TORCHINSKY: One administrative matter. I believe Dr. Barreto is not available tomorrow morning, and a couple of us are going to have cross examination; would it possible to ask the court's indulgence to go later tonight, to complete his testimony this evening?

THE COURT: I think we should have it done in 45 minutes.

Q At the point in time that you were collecting the data, running your analysis, making your report, providing your information to the Commission, as far as you know, did I have any knowledge of any of that?

A No, not at all.

Q Participate at all in any of the analysis you described here today?

A No, none.

Q I think you testified, at the beginning of this, that you have testified, or given expert opinions, in 50 or so cases, and published a number of -- dozens of articles on this.

Do you view, based on your experience as a social scientist, this question of whether or not there's racially polarized voting in the Yakima Valley, a close one at all?
A No, not at all. There have been multiple lawsuits, state and federal, already decided, and found that there is, indeed, racially polarized voting in this region. And I believe that my analysis, and perhaps others', verifies that even further.
Q And on the matter of *Gingles* 1, whether or not the Latino community is sufficiently geographically compact to be a majority in a single-member district, do you find that a close question in the Yakima Valley?
A No, not even close. I mean, you saw from the red-and-green-colored map, there is an extremely large and extremely geographically compact Latino community in this region.
Q Thank you, Dr. Barreto.
MR. DUNN: I pass the witness.
THE COURT: Okay. Mr. Torchinsky.

CROSS EXAMINATION

BY MR. TORCHINSKY:
Q Dr. Barreto, I'd like to ask you a little bit about your background. When you mention Latino Decisions' clients, you mention a number of non-profit organizations. Did Latino Decisions include the National Democratic Campaign Committee,

A I don't recall the specific facts, but I know that the community was -- that it was quite possible to draw three districts.

Q Now, when you presented your *Gingles* 1 analysis, you didn't mention the compactness of the minority population in your district.

MR. TORCHINSKY: Can we go to the Yakima Columbia River -- go about three more, about eight more pages. Go back right there.

Q So in this map that you see on the screen here, can you tell me where the concentrations of minority of Hispanic citizen voting population are?

A Do you mean, like, which cities?

Q Yes, which cities?

A Well, there are large Hispanic populations following the river, which is where most of the actual population is. There's also just lots of rural farmland, in between, where nobody lives. But Yakima down to Wapato, Toppenish, Granger, Sunnyside, all of those areas have large Latino populations, including some of the portions of Franklin County, as well, that are included.

Q And so when you go down to -- how far apart -- does Pasco have a large Latino population?

A Yes.

Q How far apart are Yakima and Pasco?

Q Your goal, in drawing this map, was to hit a 60 percent Hispanic citizen voting age population; is that correct?
A That was not the goal, no.
Q What was the goal?
A The goal was to draw a community of interest that connected large Hispanic communities, in this part of the state, to have roughly 157,000 people, so it was within deviation. And then after that was done, to examine the demographics, and the performance of the district, to determine if it would create an opportunity to elect.
Q Do Yakima and Pasco share television stations?
A I don't recall.
Q Do they share newspapers?
A I believe they each have their own newspaper.
Q Do people commute from Yakima to Pasco, generally?
A Which people?
Q Does anybody? I mean, do you -- your community survey provides commuter flows.
A Yes, some people do commute.
Q From Yakima to Pasco?
A Yes.
Q How about from Pasco to Yakima?
A Yes.
Q Regularly?
A I mean, people that work and live in those places,

probably do it regularly.

THE COURT: Including judges. Judge Estudillo just reminded me.

Q Let's go to the next page. So this is your Yakima Reservation district. Again, looking at the north central part of that district, there's like a finger that reaches up into Yakima. Why is that finger there in that map?

A That's where Yakima City is, the city limits, and has a fairly substantial population. And so it was included in this map.

Q When you go all the way to the east, up to Othello, why does that sort of bizarre finger shape stick up there?

A I don't see anything bizarre. I don't know what you're talking about.

Q The shape around Othello, where it kind of looks like a little saw at the bottom. It's kind of a little protrusion in the eastern part of the district. Do you not see that?

A Well, as I said, you have to have 157,000 people in the district, so you need to keep drawing and adding census blocks, until you get to 157,000. Much of this area, as I think you're probably familiar with, has very, very little people in it.

Q But you're reaching --

A Hanford here in the middle, and lots of vacant land, uninhabited land. So you have to keep drawing, until you get

to 157,000 people. And Othello, looks like Royal City as well, Mattawa, these are some areas that are at least towns that have population that you could draw into the district.

Q You're reaching these fingers out purposely to grab Hispanic population; is that correct?

A No.

Q So why did you grab Yakima and Othello, and put them together in a single map?

A As I said, we studied the area. We looked at whether there was common communities. These were communities that had a lot in common with each other, and could be joined together in a political district.

Q What do Hispanics in Othello have in common with Hispanics in Yakima, beyond race?

A Well, if you're familiar with the region, the entire Central and Eastern Washington area, the larger Yakima Valley has a lot in common, of a rural agricultural area. There are very similar jobs, industries. There's a large immigrant population. There's a large Spanish-speaking population, first-generation population, in many of these areas. They have an incredible amount in common, this entire region. And so they're a common community of interest. As I said, we have to draw until we get to 157,000, for one person, one vote.

Q Did you do any spatial analysis, or examination, of the

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,	C22-5035-RSL Seattle, WA June 5, 2023 8:30 a.m. TRIAL - Day 2
BENANCIO GARCIA III, Plaintiff, v. STEVEN HOBBS, in his official capacity as Secretary of State of Washington, et al., Defendants.	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

pushing for the Dream Act in the State of Washington, and for immigration reform.

I also spent time with the Latino Civic Alliance. And we would attend the legislative district -- or the Legislative Day in Olympia, to lobby our lawmakers for things that were important to the Latino and Hispanic communities.

Q And all of this work you did, was in addition to your full-time job?

A Correct. And many more organizations, other than those that I've listed.

Q How do you decide what organizations to get involved with?

A I decide what organizations to either become a part of, or spend time with, if they align with my values of what I believe are important to advocate for.

Q Can you tell the court, briefly, what are a few of your values?

A A few of my values are quality-of-life issues, transparency, access to government, especially for the Latino and Hispanic community, healthcare, and many, many more. Voter rights, of course. And voter education. And also registering people to vote, and educating voters.

Q I want to turn now to you as a voter. Are you registered to vote in the State of Washington?

A Yes. I became a registered voter in the State of Washington in 2012.

Q And since becoming registered in Washington, have you voted in every election for state representative and state senator?
A Yes. I believe I have voted in every election, since I became a registered voter in 2012.
Q Do you believe that the legislators from the Yakima Valley area are responsive to the needs of the Latino community?
A Personally, I do not believe that they are responsive. And one of the reasons I say that is back in -- before the Washington State Voting Rights Act was passed, I personally met with Senator Curtis King, from the Legislative District 14, and I was encouraging Curtis King to pass the Washington State Voting Rights Act. The community I had been involved with, particularly Latino and Hispanic community, we felt that that was an important law that should be passed.
When I met with Senator King, he was mostly dismissive.
MR. STOKESBARY: Objection, Your Honor. Hearsay grounds.
THE COURT: Overruled. Go ahead. You can finish your answer.
A He was mostly dismissive to me, in my concerns, and communicating what I felt. And ultimately he told me that the law was too litigious, like California, and he hadn't even read it, but that he would not be voting for that.
Q And so is it fair to say, you didn't feel that Senator

King was responsive to you?
A Correct.
Q In addition to meeting with Senator King, are there other legislators from the Yakima Valley area you have met with?
A Over the years, I have met with several representatives. For example, Representative McCabe, Representative Johnson, the city council, the mayor of Yakima City, Kathy Coffee, back then; she's former mayor. With Dan Newhouse. The sheriff and the police department officials.
Q You said you met with Representative McCabe, I believe she's now Representative Mosbrucker, and Representative Johnson. What did you meet with them about?
A I met with Senators -- or, pardon me, Representatives Mosbrucker and Johnson, particularly after the 2016 general election, where the Latino and Hispanic communities were fearful for their safety, after that election, and the rhetoric of that election.
And so I brought to the representatives, the concerns of the community that we would be facing.
Q Did you feel like they were responsive to the concerns you brought to them?
A I do not feel that they were responsive to our needs and our fear for safety.
Q Ms. Soto Palmer, are you a plaintiff in this case?
A Yes, I am a plaintiff in this case.

Q Why did you decide to become a plaintiff in this case?
A I've decided to become a plaintiff in this case, because I really want for the day to come where there is equitable and fair representation for Latino and Hispanic community members to be able to elect a candidate of their choice.
Q Is this the first time that you've had to sue to vindicate your voting rights?
A No, this is not the first time.
Q What other litigation were you a plaintiff in?
A I was a plaintiff in the lawsuit against the Yakima County Commissioners.
Q Was that *Aguilar v. Yakima County*?
A Yes.
Q And if you recall, at a high level, what was the outcome of that litigation?
A From my recollection, right before trial, the weekend we were preparing, the parties were able to compromise and agree to a map that would allow the Latino and Hispanic community a more fair opportunity to elect a preferred candidate.

It also ended the -- pardon me -- the at-large general election for the county commissioners, so that in the primary the commissioners had to run in a district, and then for the general, they had to run in the whole county.
Q So you can take a moment to breathe, if you need to.

I want to turn now to your experience with campaigns.

Have you ever volunteered for a state legislative race?
A Yes. I volunteered for several state representative and senator races, in my time.
Q Can you name one or two of those?
A Yes. I was a volunteer for Gabriel Munoz's race, in the 15th Legislative District, when he ran for senator, in 2014; and Teodora Martinez Chavez, who ran in Legislative District 15 for state representative.
Q When you were volunteering for Gabriel Munoz's campaign, what areas did you campaign in, when you were doing that work?
A I campaigned in Union Gap. And I also campaigned in the lower valley, particularly the Wapato and Toppenish areas, of Legislative District 15, at that time.
Q What was your experience campaigning for Mr. Munoz in Union Gap?
A The best way that I can say is that it was shocking.
Q Why do you say that?
A There was a home that me and a volunteer had gone to. This particular volunteer was -- I think it was her first time canvassing; and she was also Latina. And this white gentleman, in front of his two small children, took the literature from my hand, looked at it, and it contained a picture of Mr. Munoz on his literature, and he told us, "I'm not voting for him, I'm racist."

Q How did that affect you?
A When I think about those things that I've encountered, if I really give it some thought, they're traumatizing. They're demeaning.
Q In addition to your work volunteering, have you ever run for office yourself?
A I've run for office twice. I ran in 2016 against Norm Johnson, for the state representative Position 1, in the 14th Legislative District. And I ran in 2018, for Yakima County Commissioner in then District 3.
Q So in 2016 when you decided to run for LD 14, why did you decide to run for office?
A That year was a presidential election, and there was a lot of excitement. We had been talking about a candidate who would represent the values that we wanted to see, which was transparency, infrastructure, access to government. And we felt, because of that particular election, the people that I consulted with, we felt that it would be a great time to run and have someone on the ballot that would give voters a choice in that election, particularly the Latino and Hispanic community.
Q What kind of activities did you do, as part of that campaign?
A I went door-to-door canvassing. I did phone banking. I did voicemails and text messages, attended parades, and went

to some events.
Q And what were some challenges that you faced in that campaign?
A Because of the prior experiences, it was hard for me to campaign in areas that were predominantly white, because I feared for my safety. And so I would try to send white surrogates to those areas.
Q You mentioned Norm Johnson was your opponent in that election. Do you happen to know Mr. Johnson's race?
A Mr. Johnson is white.
Q And did you win that election?
A No, I did not.
Q You said that you also ran in 2018, for the Yakima County Board of Commissioners. Why did you decide to enter that race?
A Again, a big issue for me that year was access to government, transparency, infrastructure, and just the needs of the community not being met. And also to provide the opportunity for the residents, voters of Yakima County, an opportunity to elect a Latino-preferred candidate.
Q And who was your opponent in the 2018 general election?
A Norm Childress.
Q What was Mr. Childress's race?
A White.
Q Did you win that race?

A No, I did not.
Q What are -- what did you learn about the Latino community, in your experience, running as a candidate in these elections?
A I learned that the Latino Hispanic community has felt that there has not been a person that they align with, to represent them on the ballot, for such a long time, that they just end up throwing away their ballots.

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

Q Thank you.

I want to turn now to the 2021 redistricting process. Did you participate in any way in the 2021 redistricting process?
A Yes, I did participate.
Q How so?
A I attended meetings of the community, particularly concerned around drawing, or getting a map advocated for,

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

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

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

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

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

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

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

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

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

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

you. I pass the witness.

THE COURT: Thank you very much.

So Mr. Stokesbary will do the cross examination first, and then Ms. Sepe.

MR. STOKESBARY: Your Honors, if I don't do this now, I'm going to have a Marco Rubio moment in a few minutes. So I apologize.

CROSS EXAMINATION

BY MR. STOKESBARY:

Q Ms. Soto Palmer, thank you for being here today. I appreciate hearing your voice.

My name is Drew Stokesbary. I'm an attorney for parties in each of the two cases involved here, so I'm going to ask you a few questions. A few of which I think will sort of overlap with what you were just asked by your attorney, but maybe a few new topics as well.

A Okay.

Q So you mentioned that you live in Yakima, and you live now in the 15th District. Did I get that right?

A Correct.

Q Okay. And do you consider yourself an active voter?

A Yes, I do.

Q Do you have any plans to move away from the 15th District, or Yakima, in the near future?

A Not at all.

Q They call it the Palm Springs of Washington. I assume you know that.
A Yes.
Q Do you know how many elections you voted on in the past four years?
A Every election that has been on my ballot.
Q Okay. Good for you.
And so you mentioned you used to live in the 14th District. You live in the 15th District now. How long ago did you move to what's now the 15th District?
A When I moved to the house I live in now, it was the 14th Legislative District. And due to redistricting, I'm now in the 15th Legislative District.
Q Do you remember about when you moved, last?
A It would have been at the start of COVID. So approximately June of 2020, I believe.
Q When you moved to that address, and I assume you changed your voter registration; did you have any issues changing your voter registration?
A No, I did not.
Q And you received your ballot by mail, I assume?
A That's correct.
Q Do you ever have any problems with that?
A I personally do not.
Q Do you get your ballot materials in English or Spanish?

A I believe it's both.
Q Okay. And did you have to request that, or does that just happen automatically?
A I believe it happens automatically.
Q So then once you vote in every election, like a good citizen, how do you return the ballot?
A Most of the time I return it to the ballot box, by the courthouse. But sometimes I mail it in.
Q When you mail it in, do you have to put a stamp on it, or anything like that?
A The times I had to mail it in, yes, I did.
Q But do you know if that's still required?
A It's my understanding that a stamp is no longer required, in the last few elections.
Q Okay.

I want to talk a minute about your experience as a candidate. And a few of the questions I was going to ask you, you were already asked, so I'm going to try to not ask those. But if I accidentally do, it's more just me not thinking quickly enough.

But you -- so you ran for the State House in the 14th District against Norm Johnson, and for County Commission, and your opponent in the general election that year was Norm Childress. Did I get that right?
A Yes.

Q And you told a story or two about some kind of racially charged, to put it mildly, interactions you had on -- in your work on campaigns. But did you ever hear Mr. Johnson or Mr. Childress ever say anything with racial undertones or overtones?
A I personally did not hear Mr. Johnson or Mr. Childress say anything like that, in my presence. But there were so many experiences that I had, throughout the community, that has been traumatizing.
Q Understood.
So talking about your 2016 race for the 14th District. It was in 2016?
A 2016, correct.
Q You kind of explained why you wanted to run, and I kind of wanted to focus on your answer. You said you wanted to give voters a choice, and I think that's really admirable. Do you think that was kind of your main motivation, or I don't mean to be sort of crass, but when you filed for office, were you legitimately hoping to win, or did you really just want to make sure there was an alternative choice for people on the ballot?
A I legitimately wanted to win. But I also wanted for voters to have a choice. So a combination.
Q Yeah, understood. Did you have, like, a campaign plan, or anything like that, where somebody sort of put together what

it would take to get 50 percent of the vote, plus one?
A I did a lot of that work by myself.
Q So did you sort of have a path of what you thought you could do to win?
A Yes.
Q So you mentioned a few things that you did do. You said you knocked on some doors. Do you remember how many doors you knocked on?
A I don't remember.
Q You said you walked in some parades. Do you happen to remember which parades those were?
A Some of the ones that I recall are in Wapato and in Toppenish, the Treaty Days. I may have also done a parade in the Union Gap area, but I'm not certain.
Q Okay. Do you remember how much money you either raised or spent in that campaign?
A I don't remember.
Q Did you air any television ads or anything like that?
A No, I did not.
Q Did you send out in flyers or postcards to voters?
A No. I left literature at the door.
Q But you don't remember how many doors you might have left that at?
A I don't remember.
Q I'm not sure I can remember things I did last month, so I

don't blame you. I just wanted to ask.

And then another question that I want to ask you about, circling back to your experience working with your elected officials. If I caught it right, you said that one of the earliest things you had worked on, when you moved to Yakima, was lobbying the legislature to pass the Dream Act. Did I catch that correctly?

A I was working with the Yakima County Dream team supporting them in their fight to pass the Dream Act.

Q And I think I know what that is, but just to make sure I know, and also to illuminate everybody else. Could you kind of briefly explain what the Dream Act was?

A I don't remember the specifics of the Dream Act, it was so long ago. And I've worked on a lot of different things. But it's basically a pathway for our young immigrant Latino and Hispanic, in particular, community.

Q So my understanding was that the bill would have allowed undocumented high school students, who lived in Washington, to receive in-state tuition at Washington's institutions of higher education. Does that align with your memory?

A That sounds familiar.

Q Okay. And you lived in the 14th District back then?

A Correct.

Q Do you happen to remember how the 14th District's senator and representatives voted on that legislation?

A I don't remember.
Q Would it surprise you at all, if you knew that Senator King, and then Representative Johnson, and Representative Ross, who represented the 14th District, voted in favor of that legislation?
A No, it wouldn't surprise me. I also know that it had been work that had been in the works for a long time, advocate work that had been in play for a long time.
Q So I know you mentioned a few other topics where you and Senator King did not agree. But do you think the fact that he was willing to vote for something like that on another bill you did support, is evidence that he is sort of listening to folks in his community, and taking various viewpoints into account?
A That could be so.
Q Okay.
Last topic, Ms. Soto Palmer, and Your Honors. I wanted to talk about something that I don't think came up yet, that is the most recent election in what is now your new Legislative District 15. So you mentioned a minute ago you voted in every election that's been on the ballot. So I assume you voted in the 2022 legislative elections?
A Yes, I did.
Q Do you happen to remember anything about any of those races?

A Nothing in particular comes to mind.
Q Okay. That was kind of a vague question, I'm sorry. I'll ask it a little bit more specifically. I think two of those, two of the races for the state House were not contested. But there was a contested rate for the state Senate in the 15th District; does that sound right?
A Yes.
Q Do you remember who you voted for in that race?
A I do.
Q Do you mind sharing it with us?
A I voted for Ms. -- I think her name is Lindsey Keesling.
Q Did Ms. Keesling win?
A No, she did not.
Q Do you know who did win?
A I believe it was Nikki Torres.
Q So you did not vote for Nikki Torres, but do you know anybody in your community, or in your various circles, who did vote for Senator Torres?
A I don't know how people voted. And personal knowledge of people I know, would not have voted for her, if they were -- if I knew them, and they lived in the Legislative District 15.
Q Fair enough. I don't like talking about politics with anybody really either, but I know my in-laws sure do, so just wanted to ask.

Ms. Soto Palmer, if I caught some of your testimony earlier, right, you said one of the reasons -- I don't want to put words in your mouth -- but I thought you were saying one of the reasons you had run before and been involved in various ways, was to obtain more Latino and Latina representation in your community. Is that accurate at all? Is that something that's important to you?

A That's part of it, yes.

Q So even though you didn't vote for Senator Torres, do you think the fact that she is now in the legislature as a Latina, from the Yakima Valley region, do you think that, even if she doesn't agree with you, that's sort of a good thing in some ways?

A For anybody that is a minority to get in office can be a really good thing, depending on their values and the things that they work on while in office.

MR. STOKESBARY: Okay. Thank you very much for being here today, Ms. Palmer. No further questions.

THE COURT: Thanks, Mr. Stokesbary. Ms. Sepe?

MS. SEPE: No questions from the state, Your Honor.

THE COURT: Any redirect?

MR. PHILLIPS: No further questions.

THE COURT: Ms. Soto Palmer, let me ask you. Obviously there's a long way to go, but look to my left, here's Judge Estudillo, who was elected in Eastern

Washington, and now is the chief judge of our district. Judge VanDyke recently added a new colleague, Salvador Mendoza, who was also a state court judge, elected, and now sits on the Ninth Circuit, which is chaired by a Latinx woman, Mary Murguia, from Arizona, whose sister was the head of a big organization of lobbying, and obviously there's progress being made. Not saying it's changed the dynamic completely. But are you still of the belief that the low turnout among the Latin community in this legislative district, can be explained by just saying, we don't feel represented so we don't vote, and I don't want to get fired?

THE WITNESS: I believe there are many reasons, Your Honor. But those are some of the things that I heard at the door, over many campaigns. Mr. Munoz's and Ms. Teodora Martinez Chavez's were not the only campaigns I went door-to-door for in the last 12 years. And so it just is a common continuing thing that we hear at the door, over and over.

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.

THE COURT: Great. Thank you very much. Any other questions out there?

And, Ms. Soto Palmer, feel free to stay. You're a party here, you can stay as long as you want or as little as you want.

THE WITNESS: Thank you, Your Honors. I appreciate the time to be able to give my testimony to you.

THE COURT: I thought I saw you through the glass doors taking pictures out there. Was that true?

THE WITNESS: Yes, I was.

THE COURT: We're going to have to confiscate your phone. All right.

THE WITNESS: Thank you.

Are you ready with the next witness?

MR. GABER: My understanding is Commissioner Walkinshaw is the next witness. I believe he was told, I don't know -- I believe he was told to come at 1 o'clock, so perhaps we can take lunch.

THE COURT: Is anyone else ready to plug in?

MR. GABER: No. Mr. Grose is not here either.

THE COURT: Why don't we contact Mr. Walkinshaw and see if we can move him up to maybe 12:30 or 12:45, and we'll

is on the sort of lower left-hand side of the screen under the overlays section. Does that look familiar to you?
A Correct.
Q And so one option is to put on city lines, and it will show you where the boundaries of particular cities in the county are?
A Correct.
Q And then you can also select to show the precinct lines as well. Do you recall that?
A I do.
Q And then another feature is that you can -- say you want to collect certain blocks within a precinct, up in the sort of middle-top of the screen, you're able to select for block. Then if you click on the precinct, it will take you in -- if the Internet is working, which it may not be -- and, in any event, if you had functioning Internet, what would happen is the census block lines, within that precinct, would show up. And you'd be able to select certain among them to be in the district?
A It starts getting tedious at that point. But, yes.
Q Right. Okay. And there's other features. I won't regale everyone with everything. But you can have the name of the precinct come up, so you know actually the county's numbering for it, as it's on the map. Does that seem right to you?
A Correct.

Q And then there's also, depending on what demographic data or what political data you have showing, the map will then show for you, those results, and the sort of -- this is the political data showing up now. This is the 2020 President result, by precinct. Do you see that?
A I do.
Q And it will show, in gradations of blue and red, the election results within a particular precinct, right?
A Correct.
Q And then by the same token, if you select -- you can select, for the minority population, and it will show you the -- by shades of sort of white to darker black, the minority population locations within the county. Do you recall that?
A Correct.
Q And both the political data and racial shading data are tools that you used during the process of drawing the maps?
A I think by the time we were actually at the process of putting final maps together, we had pretty well-known, pretty specific territories, dare I say, the precincts in the state, I pretty well know almost all of them. So at that point in time, we had a pretty good idea where the populations were. So the shading not so much, or even the political data, for that matter.
But at that point in time, through getting familiar with the map, itself, these tools were used, correct.

Q So -- and that was -- so earlier in the process from, say, August to November, earlier in that timeframe, you would have been using the shading tools to sort of acquaint yourself with where the minority population lived, and how that corresponded with political results?
A Not so much how it corresponded, but just where the density was. And, again, not just limited to -- today we're talking about the 14th and 15th, but there were 47 other districts that we were also concerned about. So it was a tool that we could use in all parts of the state.
Q And so you're not just limited to having the shading shown, right? Dave's actually will show you on the right-hand column, as you hover over a precinct, what the total population is; depending on which, VAP or CVAP you've selected, it will list that as well for that precinct, and at the same time it will show you the political results in a given precinct; is that right?
A Correct.
Q So right now I have the mouse over Precinct 126. You see that at the upper right-hand corner under "precinct details"?
A I do.
Q And we see there that the Hispanic CVAP is 65.6 percent of that precinct. And the Democratic candidate received 78 percent of the vote for President. Does that look right to you?

A That's correct.
Q And so as you were drawing the map and selecting precincts to include within a district, or even just as if you were sort of familiarizing yourself with the map, before you started drawing, this was the type of information that you were seeing, right?
A Correct. Whether it was Dave's or Autobound, both in this regard, similar.
Q And so I've just pulled into -- we just went over a substantial majority Hispanic CVAP precinct, right?
A Correct.
Q By contrast, we can look north of Yakima here, I'm hovering over, I'll select it, so you can see it there, that's Precinct 4603, with a white CVAP of 87.9 percent, and a Republican performance or Republican vote total of 68.9 percent, right?
A That is correct.
Q Okay. And so I gather, given the amount of time that you spent in Dave's, to the point where you said you didn't even really need to have the data showing, towards the end of it, you just knew, right, as you look at these communities, and as you were looking at them and drawing them into districts, this pattern of -- and I've just selected Wapato, for example -- this pattern of the substantially majority Hispanic communities, voting in near equal numbers to their population

for the Democratic candidates. That was a pattern that you saw, as you were mapping, correct?
A That held pretty tight. Obviously 2020 President is the most extreme example of that, certainly. But, correct.
Q And so we just looked at -- I've highlighted Wapato. And actually let me do this, sorry. So the City of Wapato. There's another thing you can do, you can select -- put the whole city into a district, or highlight the whole city and see its demographic details too, right?
A Yes.
Q And so Wapato, 79.9 percent for Biden, 63.6 percent Hispanic, with a sizeable Native American population, too. Do you see that?
A Correct.
Q That fits with what you understood Wapato to be like, when you were doing the mapping?
A Correct.
Q And that sort of holds true throughout the Yakima Valley and the City of Yakima. Toppenish, for example, with a -- you're familiar with Toppenish?
A Correct.
Q And so I have the mouse over Toppenish right now. And you see that there's a 73.1 percent Hispanic CVAP, and the Democratic vote total of 75.7 percent, right?
A Correct.

Q And I'm not going to walk you through all of them. But you see Toppenish, Mabton, Sunnyside, Grandview, this same pattern was something you were aware of when you were drawing the map?
A Correct. Yeah. These communities were -- it's been a while since I've seen the boundaries. I believe these were within the Yakima Nation. So obviously that's probably a whole different conversation we'll get to today, at some point. But, correct.
Q And then if we look at Pasco -- you're familiar with Pasco, right?
A Correct.
Q That's in Franklin County?
A Correct.
Q And so you were familiar that the same sort of pattern was true there as well, that the substantially Hispanic precincts in Pasco, were just as heavily Democratic in their electoral choices as well, correct?
A Correct.
Q Now, and conversely, if during your mapping process, just as we saw north of Yakima where there was a substantial white precinct, that pattern was clear to you throughout the area, that the sort -- the more rural white-heavy precincts, were sort of equally heavy in their support for Republican candidates, based on the mapping that you were looking at as

you were working?
A Most of them. Not equally as heavy. But we were aware of that pattern, correct.
Q And just as an example, we're still in Franklin County here. And let's -- that's maybe not the best one. This is Precinct 71 that I've -- let me make it a color, so you can see it. This is a precinct that has an 87.3 percent white CVAP. Do you see that?
A Correct.
Q And then the performance is 81.5 percent for the Republican candidate?
A Correct.
Q And that sort of is the kind of pattern that you were aware of, just from using this tool. You were aware of that?
A Correct.
Q Now -- and this was sort of a, sort of unavoidable conclusion that one would draw from going into this, and from the beginning, August, from August onward, that this basic fact of strong Hispanic support for Democratic candidates, and strong white support for Republican candidates, that was clear to you?
A I was certainly aware of that. I don't know that the overarching goal was to use that, in one way or another.
Q Sure.
A I think at the time, especially coming toward the end of

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

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

A Generally speaking, yes.

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

A Historically speaking, yes.

Q Now, throughout the negotiations --

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

THE WITNESS: Well, there was a recent election in

the 15th, that we're all discussing today, ironically, in which they did elect an Hispanic senator there, for the 15th, with a much higher than we would have expected margin. And I hadn't seen any precinct-level analysis on that, or any racial comparison to that.

So that kind of, what I would say, bucks the trend a little bit. Also in some ways -- and clearly, nationally, over the last several years, we've seen some pretty big realignments, not within say the Hispanic community, but large political realignments. So I thought it was important to qualify that, with -- this is always a changing landscape, so to speak.

JUDGE VANDYKE: Thank you.

Q In terms of the data that you had at the time, your conclusion was --

A Right. Historically, correct. Right.

Q And with respect -- and I'll talk briefly about the 2022 election in this district, since you brought it up. At the time that Ms. -- Senator Torres, excuse me -- announced that she was going to run, it was still the case that Senator Honeyford, who was the longtime incumbent, he had not announced that he was retiring, right?

A I was not privy to any of those details. Once the map was passed, I checked back into my normal legislative duties.

Q But you worked in the legislature, right?

A Correct.
Q So I gather that you are aware, though, that there was actually no announced Democratic candidate for that seat, when the filing deadline happened?
A Correct. I was aware of that.
Q So Senator -- then candidate Torres, now Senator Torres, was at that point, she had the field to herself. There was no other name on the ballot, right?
A No other name on the ballot, correct.
Q And then in addition to that, the two state House Republican incumbents also ran unopposed?
MR. STOKESBARY: Objection, Your Honor. Misstates the evidence.
THE COURT: I don't think we should ask him about these kinds of things. If you want to bring in evidence about it, it shouldn't just be through him. So objection sustained.
Q Throughout the negotiation process, in addition -- so the documents can be confusing, because of the numbering of the districts. So sometimes they're referred to as District 14, sometimes 15. Is it your recollection that sort of calling it the "CVAP district," was something that started to happen?
A That sounds familiar. I believe that would be correct.
Q And then that was in reference to the fact that it was a Hispanic CVAP district?

A Correct.
Q I am going to take Dave's Redistricting off the screen for now. And if we could pull up, please, Exhibit 475.
So, Mr. Grose, after Dr. Barreto's analysis came out, there was a time in early November, where Mr. Graves directed you to draw plans that would be a majority Hispanic CVAP, and also would be districts that would lean towards the Democrats. Do you recall that?
A Specifically, no. But we went through many exercises such as that.
Q So I have one on the screen here. This is a proposal. So you drew all of Mr. Graves' or Commissioner Graves' proposals; is that fair?
A To the extent that I'm aware. He may have drawn some of his own.
Q And, generally, you were operating at his direction; is that right?
A Correct.
Q And so if this came from you, it would have been Mr. -- Commissioner Graves, directing you to do that?
A Correct. Yeah.
Q Now, you may not recall the specific one -- or do you have any recollection of this particular --
A Not this specific one. But then, again, there were, I think, over 100 of these that were drafted. So apologies, I

can't say specifically about this one.
Q So this one, if you see on the right-hand side, the Hispanic CVAP, this proposed from Commissioner Graves was 50.6 percent, and then displayed in the exhibit is the Governor 2020 results, that show that the Democratic candidate would have prevailed by about -- can I do math? Eight points; is that about right?
A That's correct.
Q So was there a point in time when -- I gather from this proposal, that Commissioner Graves was sort of expressing a willingness to his counterparts to draw a map that sort of fit what they were asking for as a result of Dr. Barreto's analysis?
A If I recall correctly, yeah. We knew that after the analysis came out, like I stated earlier, there would be a compromise. You know, we wanted to make sure the map didn't go to the State Supreme Court. That was kind of a bad situation for all commissioners. I can't speak to them, but I assume they would see it that way as well. So I'm assuming, by the look of it, and now that I can see the numbers here, this looks like this would be kind of a proposal to consider with our counterparts.
Q If we can pull up Exhibit 277, please.
And if we could zoom in to the -- can I zoom with my mouse? Oh, my goodness.

So this is an e-mail sent from Paul Graves to April Sims, copying you, in addition to Commissioner Sims's staff. Do you see that?

A I do.

Q Do you recall this e-mail?

A Not vividly. But this would resemble one of many e-mails where I think we were trading back and forth, maps, as was brought up earlier. Yeah. There were a lot of those kind of e-mails.

Q Now, this is -- and just to be clear, this is not an e-mail transmitting that last map we were just looking at. I just want to make sure the record is clear on that. But Commissioner Graves was sending a new proposal. And do you see, in the first sort of bullet, if we can call it that, that in this proposal he's saying to Commissioner Sims, "The 14th is ever so slightly more Republican here, than your last proposal. Still firmly swing. And that it's a majority Hispanic CVAP." Do you see that?

A I do.

Q Then one of the things that he asks in the next bullet, at the bottom, last sentence is, "My biggest question to you, then, what do you think is a fair exchange for this 14th?" Do you see that there?

A I do.

Q And then I don't know how to un-zoom. And then can I

change to the second page?

MR. GABER: I need to stop being in control of the mouse. I did really well with the map, I thought. My apologies.

THE COURT: You did very well, then crashed and burned.

Q So first page. What is a fair exchange for this version of the 14th? Then again, if you see in the last paragraph there on the second line, "I'm interested in hearing what you think is a fair price for this 14th." Do you see that?

A I do.

Q Is that your recollection of the negotiation over the sort of configuration of this, we'll call it the CVAP district in the Yakima Valley, that there was sort of a price to be paid if the Democratic commissioners' preferred version of the map was what made it into the map?

A I'm sure he's using the term "price" a little off-the-cuff, so to speak. That being said, I think there were -- like I mentioned earlier today, we're pretty much talking about the 14th and 15th. But, again, there were 47 other districts on the map, that both the Democratic Caucus and Republican Caucus were interested in. So I think at some level, even a discussion about the 14th or 15th, other districts come into play. This was a pretty similar pattern that we saw, from the other caucuses as well. Everything is

always a negotiation, all the time. So I think doing his due diligence to see if we could get some of the other priorities that we wanted elsewhere on the map, included, if we used this version of the 14th, that's how I would interpret this. Again, this was 18-plus months ago. But that's how I'd see this.

Q Now, in the latter part of that paragraph, there's some discussion from Commissioner Graves to Commissioner Sims, that Brady might not be agreeable to the proposal, that perhaps Ms. Sims would, but Brady, being Commissioner Walkinshaw, would not be agreeable.

What is your recollection or understanding of that dynamic?

MR. STOKESBARY: Objection, Your Honor.

THE COURT: It's all speculation at this point. So I'm going to sustain the objection.

Q If we could pull up Exhibit 281.

Now, this is, I believe, later that day, an e-mail from you to Paul Campos on November 11th at 4:08 p.m. Do you see that?

A Excuse me, can you say that one more time?

Q Sure. This is an e-mail on November 11th, which is the same day as that previous one that we were looking at, from you to Paul Campos. Who is Paul Campos?

A Paul Campos was essentially my counterpart. He staffed

for Commissioner Fain, for the Senate Republican Caucus.
Q And if you take just a chance to read the content of this e-mail here.
MR. HUGHES: Objection, Your Honor. Hearsay.
THE COURT: Just read it to himself. Just read it to yourself. Don't read it out loud yet.
A Okay.
Q Were you -- so "she" in this e-mail, is that referring to Commissioner Sims?
MR. HUGHES: Objection, Your Honor. Now we're getting into hearsay.
THE COURT: I think he can give the context of it. Go ahead.
A I would assume so. Again, it was sent a year and a half ago. I would imagine so.
Q Do you recall the sentiment, during your experience in the negotiations, do you recall the sentiment of Commissioner Sims suggesting that she didn't want to give up -- she didn't want to sort of trade anything for the 14th District, because the court could just end up drawing that district anyways, so why give away some Democratic performance, on the other part of the state?
MR. HUGHES: Objection, Your Honor. Hearsay.
THE COURT: I'll allow this one. If you know. Don't speculate, but only if you know.

A I can recall that much more so from Commissioner Walkinshaw. I don't recall this topic so much from Commissioner Sims. That's the best that I can recall.
Q The sort of positioning over litigation about this district, during the negotiation process that you observed, that sort of was a theme on both sides, wasn't it?
A Could you clarify?
Q I think we have an example here on the screen, that one idea was: Well, why would we negotiate over this, because the law, we think, requires it, so let's just let the court do it. That sort of -- the topic of litigation, at least was with respect to this district, in particular, was sort of at the forefront?
A Right. I think it was an unknown, from recalling at the time, we didn't have any idea necessarily how that would turn out, right? How litigation would turn out on this particular subject. But I think we felt confident that it almost certainly would go to court, as I alluded to earlier, one way or another, even if we adopted the Barreto district in its entirety.
Q Around November 12th, so just in the lead-up to the deadline on the 15th, was it your understanding that Commissioner Walkinshaw was still pretty firm, in his position of the type of configuration that would be strongly Democratic performing, with a Latino majority, that he was

still firm in that position?

MR. STOKESBARY: Objection. Calls for speculation.

THE COURT: I think we've covered this enough times. Let's move on, counsel.

Q Around that time, as between Commissioner Sims and Commissioner Graves, was it the case that Commissioner Graves was now taking sort of the lead, and drawing the various configurations of District 15?

A I can't recall there ever being a particular lead for that. I think it was -- as mentioned earlier, both the House Republicans and House Democrats, were largely working on the legislative map. But this area, in particular, was a concern to Commissioner Walkinshaw. So I think all parties were really at the table discussing that. I couldn't give you an exact, who carried what burden, at what point in time.

Q You certainly were drawing several versions of District 15, in the days leading up to ultimate adoption?

A I'm sure I would have. I couldn't say what all those specifically looked like. But I'm sure I did.

Q If we could pull up Exhibit 304. And the bottom e-mail, please.

Now, this is an e-mail from your boss, Commissioner Graves, on the 13th of November, to Commissioner Sims, and copying, again, you and Commissioner Sims' staff. It's in response to a proposal that Commissioner Sims had sent. Do

you see that?
A I see the e-mail. Correct.
Q And do you see where Commissioner Graves says to Commissioner Sims, basically, I'm sending you a version of the CVAP district, the number has been changed from 14 to 15, and then, "It's not the just below 2019 CVAP you proposed, but instead it's at just over 50 percent CVAP." Do you see that there?
A I do.
Q Do you recall that Commissioner Sims was sending proposals at this date, two days before the adoption, that had a district, that was District 15, that was not majority Latino by CVAP?
A I do faintly recall something like that. I could not tell you what the map looked like. But I do recall that -- that coming up.
Q So during your direct examination, I recall that you testified that having a majority Hispanic by CVAP district, was a requirement to get the support from the Democrats and the Republicans. And I'm curious, because Commissioner Sims was sending proposals that were not majority CVAP. And as this reflects, Commissioner Graves was bumping them up to over majority. What did you mean when you said that it was a requirement for the Democrats and the Republicans?
A This was a good reminder. Actually, I had completely

forgotten that there had been a proposal like that. So as we see these e-mails, that does come back to me here.

My broad recollection was that the Senate Democrats and the House Democrats, although apparently this was a little contradictory, weren't going to vote for a map that did not have a majority Hispanic CVAP district, in the greater Yakima Valley region. That was the best of my recollection. But obviously this is reminding me of some new things, obviously. Like I said, there were hundreds of these proposals.

Q And I wouldn't hold you to remember all your e-mails. But certainly what this shows us is that, at least from Commissioner Sims' perspective, she was willing to -- she was proposing maps that were not a majority, right?

THE COURT: I don't know that he can say that. It says what it says. Right? Maybe Commissioner Graves said, "just below," when he meant, "just above," you know. It's just unclear.

JUDGE VANDYKE: Can I ask a question about this, before we move on?

You were working for Paul Graves.

THE WITNESS: That's correct.

THE COURT: Who is -- I'm sure he's not in there making the maps, using the software. Who is making these maps that he is circulating?

THE WITNESS: I think in this particular one -- so I

would often draft the maps that he requested. And you can see, say, Osta there. So Osta was in a similar position, as I was, for Commissioner Sims. She did, as far as I know, a lot of the drafting for April Sims. And I think the map that Paul would be talking about here, again, I don't have the e-mail and the attachments in front of me, it appears that that probably would have been a map that Osta would have drafted, for Commissioner Sims. I don't know if that answers your question.

JUDGE VANDYKE: But you're sending one. I assume there was a map attached to this e-mail, coming from -- it says, "Two corrections we made to CVAP." Does this e-mail reflect its own map, that's different than the --

THE WITNESS: I can't see if there's any attachments here.

Q (By Mr. Gaber) I think I can assist. The commissioner -- the email below -- he sent two e-mails in a row. He is saying, "Anton is going to send an E-zip," which I believe is what was generated from Edge; is that right?

A Likely. I can't say for sure.

JUDGE VANDYKE: So kind of my question, in a circumstance where that happened, it was often you that was making -- that was actually making the maps, if Graves was sending a map over to Sims?

THE WITNESS: Right. Typically we'd have a meeting

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

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

THE WITNESS: Correct.

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

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

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

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

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.	C22-5035-RSL Seattle, WA June 2, 2023 9:00 a.m. TRIAL - Day 1

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

APPEARANCES:

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

Q When you say you worked in agriculture, can you tell me a little bit of what you did?
A Yeah. I did a lot of picking peaches and apples, and sorting and packing, in a lot of different warehouses as well.
Q What was that like?
A Um, it was very hard -- a lot of hard work. Early mornings. Sometimes we were there 17 hours a day.
Q And do you mind my asking, what was the racial ethnic makeup of the workers you were with?
A I would say the majority were Latino, except for the supervisors and owners.
Q Did you experience any racial discrimination when you were working that job?
A Yes. A lot of the time, because I did happen to be there to put myself through school, I could hear, like, owners talk about racial issues, and kind of make racial comments about workers.
Q How did that make you feel, when you heard those comments?
A Really sad, because I felt like we had a bond, but in reality, we were just like employees.
Q And, Ms. Lopez, you mentioned that you are currently employed. Do you mind telling me what you do for work?
A I'm a community organizer with Planned Parenthood.
Q What do you do in that job?

A Mostly voter education, and just a lot of community outreach.
Q Do you like your job?
A I do.
Q Ms. Lopez, so you stated you're a community organizer by profession. Do you do any other types of advocacy work?
A Yes. I volunteer whenever I can, for different organizations that do a lot of citizenship -- work around citizenship and agricultural workers' rights.
Q Do you mind telling me a little bit about the work that you've done, I guess in your spare time, around citizenship?
A Yeah.
So one of the committees I belong to is our May Day committee. So we put on a march every May 1st, that brings awareness to farm workers' rights. I also volunteer for our Citizenship Day, which is a day where lawyers come together and help individuals file their citizenship applications, free of charge.
Q And have you ever seen your state Senators at Citizenship Day?
A No.
Q Have you ever seen any of those state legislators' staffers at Citizenship Day?
A No.
Q Where is it held?

A It is usually held in Yakima. But they also have one in the Tri-Cities area.
Q How does it make you feel, when you don't see your state representatives at Citizenship Day?
A Like they don't care.
Q Do you do any other type of advocacy, outside of Citizenship Day and the May Day work that you do?
A I have attended several legislative lobby days in Olympia, to help advocate for the Latino community as well.
Q And what type of advocacy work have you done, during those legislative days of action?
A We were mostly advocating over the Washington Voting Rights Act, and funding for Medicaid for undocumented individuals.
Q Who are you speaking with during the -- when you were advocating for the Washington Voting Rights Act?
A When I went on behalf of myself, I was speaking with my representatives from the 14th District. But I also chaperoned several legislative session visits, where I took our volunteers and supporters through several different visits within the 13th, 14th, 15th, and 16th Districts, as well.
Q Would you say you're familiar with the issues around the 14th and 15th legislative districts?
A Yes.

Q Does that come from your work doing advocacy, during those legislative days?
A Yes. I would say it comes from my experience as a volunteer, and a lot of the voter engagement work that we do in the community as well.
Q Do you mind telling me a little bit about that voter-engagement work that you do with the community?
A Yes. It's a lot of door-to-door, as well as crowd canvassing, whether that be at our small local events, or larger events throughout the state. So it's a lot of conversations with our community about who's running for office at the moment, or what issues are being voted on within our Washington State at the moment as well.
Q What are some of the comments that you hear, when you do door-to-door canvassing, from members of the Latino community?
A We hear a lot that, our vote doesn't really count, that it doesn't really make a difference whether we vote or not.
Q Why do you hear those comments?
A Because year after year, a lot of our community-supported candidates run, and work really hard, and never win.
Q How do you feel when you hear members of the Latino community tell you that they don't think voting matters to them?
A Really sad and discouraged.

Q What do you do after you feel sad and discouraged?
A Usually I just try to make up a plan to try to go to more events, and talk to more people one on one. And I guess that's all I can really do.
Q Ms. Lopez, I want to go back to talking to you about the Washington Voting Rights Act that you advocated for. Did you meet any elected officials representing the Yakima Valley area, when you were doing that work?
A Yes.
Q Who did you meet with?
A I remember meeting with Senator Curtis King at the time.
THE COURT: I missed the name.
THE WITNESS: Curtis King.
Q What did Mr. King, or Senator King, say to you?
A They agreed that voting was important, but they didn't really think that that legislation was necessary.
Q How did you feel when you heard your senator say they didn't think that the Washington Voting Rights Act was necessary?
A Discouraged, because I, myself, gave my opinion, and a lot of our volunteers and visitors gave our opinion, and we felt like they weren't really listening to our stories.
Q Did your state elected officials ultimately end up voting for the Washington Voting Rights Act?
A I'm not exactly sure if they supported it.

Q Ms. Lopez, is it hard to do the advocacy work that you just described for us today?
A Yes.
Q Why is it hard?
A It's a lot of phone calls, a lot of walking, and even within our community, like I said, our community works really hard, and we might get to the door and they're not there. So it takes a lot of planning.
Q Ms. Lopez, you do a lot of this advocacy work that you just described today, outside of your paid job as a community organizer; is that right?
A Correct.
Q Have you volunteered for any political campaigns in the Yakima Valley region?
A Yes. I volunteered for several people running for office.
Q What happened when you volunteered for those campaigns?
A It was mostly a lot of door-to-door canvassing and phone calling, just to get our community aware of those folks running.
Q When did you volunteer for those political campaigns?
A I've done several throughout the years. I started with a race for the Yakima in 2014, '15, '16, and even, like, last year.
Q Did any of the candidates that you volunteered for, end up winning?

Washington Redistricting Commission?
A The district's currently split, East Yakima, which is where the majority of Latinos live.
Q Do you think that the current Redistricting Commission, in 2021, in their enacted plan, also split the Latino communities in Yakima and Pasco?
A Yes.
Q Why did you say that too often there's abuse in the redistricting process, during your public testimony?
A Well, I feel like they just chose to ignore a lot of our opinions, and it was community members who live there. And so to not take that into consideration when drawing districts, to me is not correct.
Q Why did you want the commissioners to hear your testimony that you gave, that's reflected in Exhibit 97?
A I think I can provide a pretty good example, because not only have I lived in the community my whole life, I've done a lot of political advocacy within the community as well.
Q Ms. Lopez, sitting here today, do you stand by the comments you made to the Washington Redistricting Commission?
A Yes.
Q And ultimately, do you think that the Commission was receptive to the advocacy that you gave?
A No.
Q Why do you think that?

A The maps that were released didn't reflect the opinions that our group gave.
Q Do you feel that the Washington -- the 2021 Washington Redistricting Commission, did not respect the needs of the Latino community?
A Yes. I feel like they didn't respect it.
Q And why do you feel that way?
A To keep the power as it is currently in the districts, how they are currently.
Q Ms. Lopez, did you review the Washington State 2021 enacted legislative district map?
A Yes.
Q What do you think of that map?
A I think the map, as it currently is, is going to keep our voting power the same.
Q And when you say "keep our voting power the same," what do you mean by that?
A It's not allowing us, as the Latinx community, to elect the representatives of our choice.
Q Ms. Lopez, do you think that there is a history of elected officials and public officials not respecting the needs of the Latino community, in the Yakima Valley area?
A Yes.
Q And why do you say that?
A Well, I think if you look at our representatives, they

don't look like or reflect the community that they serve. And they voted against a lot of, not only issues, but resources that would help our community as well.

Q When you say "resources that would help your community," what are you referring to?

A Funding and legislation.

Q Ms. Lopez, you are here asking this court to change the legislative district maps for the State of Washington, so I'm going to ask you, why are you here asking the court for this relief today?

A I think it's very important to empower our community for the following elections.

Q Why does it matter to you that Latinos, in the Yakima Valley, have the ability to elect candidates of choice?

A Because I feel like our population is only going to grow, and we want to have power, as people who live in the community as well. I feel like the Latino community is very important to that area, so they should have voting power, and access to better representation that understands us.

MS. WAKNIN: Thank you, Ms. Lopez. I pass the witness.

THE COURT: Okay. Thanks very much, counsel. Ms. Lopez, let me ask you. The Latino community is not of one mind on all issues, correct?

THE WITNESS: Correct.

THE COURT: Especially the one you're involved in as a community organizer, for Planned Parenthood. There's a lot of very Catholic Latinos who don't agree with your Planned Parenthood's point of view about birth control, abortion, and the like, correct?

THE WITNESS: Correct.

THE COURT: If we had an election where the key issue suddenly was abortion, don't you think that the Latino community would split along philosophy on that?

THE WITNESS: Yeah, I think that's very possible.

THE COURT: There may even be other issues, beyond that, that the community would really not be a monolithic vote, correct?

THE WITNESS: Correct.

THE COURT: Thanks so much for doing this.

Mr. Acker, questions for Ms. Lopez?

CROSS EXAMINATION

BY MR. ACKER:

Q Good morning, Ms. Lopez. I just have a few more questions, if you wouldn't mind. So it's stipulated you currently live in Wapato. Do you have any plans to move from LD 14?

A No.

Q Okay. Would you describe yourself as an active voter?

A Yes.

district, basically whether voting in that area is polarized by race, specifically between non-Hispanic whites or white individuals and Hispanic individuals.

And so I looked at that, and then evaluated the enacted map in Legislative District 15, and compared that against three illustrative or demonstrative plans; or I think in my tables I called them "alt," alternative plans. Compared how different candidates performed across previous elections in the different maps. So that's known as an electoral-performance analysis.

I also did a voter turnout analysis in the general area as well, to see if turnout varied by race and ethnicity. Then I compiled a table that looked at the different timelines of different maps that were proposed or examined, among the different commissioners. That was the main task that I evaluated. I did a couple other things, but those were the main things.

Q And we'll get into the specifics. But broadly, did you form any opinions as a result of your analysis?

A Yes.

Q And what were those opinions?

A The main one is racially polarized voting is well established in the Yakima Valley area, and that the inactive map more often than not was not going to elect a Latino-preferred candidate. When I say "preferred

candidate," I mean the candidate that the broader Latino community tended to back. And that voter turnout was also massively depressed, among the Latino population, relative to the white population.

And so, therefore, if you draw a map that's 50.04 CVAP, Latino CVAP, it's unlikely to perform for Latino voters. And that various alternative plans developed by plaintiffs look a lot better in terms of the ability for Latinos to elect candidates of choice.

Q Page 3 of Exhibit 1 discusses the data upon which you based your opinion. Can you very briefly describe what you relied upon for your report?

A When you begin a racially polarized voting study -- and all of this, the basic data set contains election results in an ecological unit, which in this case is a precinct. That's publicly available data. The Washington Secretary of State is one of the best entities that provides this data, that I work with. And that's designed so you don't ask me a bunch of difficult questions.

So you can easily get this data. And it goes down to the county, and you can get the data at the county. And then I gathered data on the demographics of the people who voted in those specific areas. And the Washington Secretary of State also provided the data, I think it was about five or six election cycles, of individual registered voters that I also

used and incorporated into my analysis. That's the main -- the core of what I'm doing here.

Q Let's get into the specifics of your analysis. In your report, you evaluate plaintiffs' demonstrative maps. What is a demonstrative map?

A A demonstrative map is simply a map that could have been drawn or maybe was drawn, but was not enacted.

Q How many demonstrative maps are in your report?

A Three.

Q Are pictures of the demonstrative maps, on Pages 21 through 24, of Exhibit 1?

A I think it's 22 through 24.

Q What analysis did you conduct regarding the characteristics of plaintiffs' demonstrative maps?

A The main analysis I did is known as an electoral-performance analysis.

Q If we could pull up Table 4, on Page 26 of Plaintiffs' Exhibit 1.

A Then I also compared various criteria, that traditional redistricting criteria across the maps that are available in the software that I used.

Q What criteria did you examine for plaintiffs' demonstrative maps and the enacted Legislative District 15?

A The first there relates to population or population deviation, which is probably the most important thing. You

the most likely estimate is that endpoint, the bar. So it generates the point estimate. Then I also generate confidence intervals, or credible intervals, around that. That's a measure of statistical uncertainty. And I place that on the bar, bar plot, as like an arrow bar, like a little arrow, like a Star Wars fighter pilot.

Q Can you briefly explain what a 95 percent credible interval is?

A So this is -- the concept is, in statistics and data science, you're always working with data that could be, you know -- there could be -- we never know the full truth, ever, in statistics.

And so the way to get around that, what we do in statistics is we generate our most likely, what we think is most truthful, most likely. That's the point estimate. Then the 95 percent confidence interval gives us a range as to what we think will happen, at least 95 out of a hundred times. In this case, because these are simulation-based analyses, we're able to pull out potentially hundreds of thousands of draws out of an area where we think the truth is.

And then we can line that on a plane, basically, from lowest to highest. And the 95 percent confidence interval will take 2.5 percent on the left, the lowest, and 2.5 percent on the right, the highest, and put that together.

And then we'll put that on the arrow bar. So that's what we do here in this case.

Q And which voters do you present point estimates for in your report?

A Latino or Hispanic voters, and then white, non-Hispanic voters.

Q Pages 7 through 8 of Plaintiffs' Exhibit 1 lists the elections that you examined for your racially polarized voting analysis. Can you briefly describe the elections you looked at?

A I looked at statewide, a lot of statewide partisan contests from 2016 to 2020, and then various legislative district analyses in the jurisdiction, 15, 14, 13, with a bit more of a focus on 15. And then I looked at some local contests that are nonpartisan. And those contests featured a Spanish surname candidate. I think one of the candidates is non-Hispanic, white, but they have a Spanish surname. And so I looked at those, as well. So I think overall, I looked at 25 elections, over something like a ten-year time period, or so.

Q And what impact does considering 25 elections, over a ten-year time period, have on your analysis?

A You have a lot of breadth. It often happens in these studies where there's a certain unique election dynamic that occurs, that is different. And you can see that in my own

results. And if you just happen to look at one contest or two, you could draw an inference that's wrong, like a global inference, not a statistical inference, but an analytical global inference. So by looking at more contests with variation, we have partisan, nonpartisan, primary, general, different units, different parts of different areas. And for the most part, it's all saying the same thing. I find that compelling, for myself.

Q On Pages 13 through 20 of Plaintiffs' Exhibit 1, you report the results of your racially polarized voting analysis for the Yakima Valley area. At a high level, what did you find?

A Pretty clear racially polarized voting. All of the different analyses, more or less, correspond with one another. And we're seeing polarization at the 70- to 80-percent level, on either side of the racial or ethnic divide, most times. And so it's just hard to say that there's not racially polarized voting in Yakima, as a general situation.

Q And how would you characterize this level of cohesion among Latino voters?

A It's high. It's high. It's occurring every single time pretty much, with the exception of maybe two contests, you see this cohesion going on.

Q Let's pull up Figure 3, on Page 14 of Plaintiffs'

Exhibit 1. And we might want to zoom in just a little bit.

Dr. Collingwood, what does Figure 3 show?

A So this is the basic -- I spent a lot of time on these plots, not just in this case but something, say, for Collingwood Research, because often what you see are people simply presenting tables. And it's hard to see the trend line in a table, I find.

And so in this case what I have is, on the left side, are support for different Democratic candidates; then on the right column, are support for different Republican candidates, and they're running against each other.

So let's just go with an election everyone is familiar with, the second -- as an interpretation matter -- the second one down is the 2020 President. And so we see the name Biden, then we can see the key down below for the different colors. You can see blue is for Latino vote choice for that candidate, is 78 percent. So what I'm saying here is that 78 percent of Latinos in this five-county region, voted for Biden. Meanwhile, the green bar shows that 26.6 percent of whites are voting for Biden. Okay?

Then you go to the other side, and you see pretty much the reverse pattern, where 22 percent of Latinos are voting for Trump, and 73 percent of whites are voting for Trump. That's pretty clear evidence of racially polarized voting, in this particular contest.

mid-morning break? We'll take our break now, and start up again at 10 minutes of 11. Great. Thanks.

(Recess.)

THE COURT: Okay. We'll continue with direct examination of Dr. Collingwood, who is being paid by the hour, not by the word.

MS. HARLESS: Let's hope.

Q Dr. Collingwood, before we took a break, we were talking about two elections, the 2018 State Supreme Court, Position 8 race, and the 2020 Superintendent of Public Instruction. Do you remember that?

A Yes.

Q Do those two elections change your opinions about racially polarized voting in the Yakima Valley?

A No.

Q Why not?

A They are two out of 25, still have 92 percent rates of racially polarized voting, of the elections I looked at. And that's quite a bit higher than what I see in other jurisdictions that I've worked in.

Q And after analyzing the 25 elections contests in the Yakima Valley area, what did you conclude whether Latino voters cohesively prefer the same candidates for political offices?

A They do. These are strong blocks of voters, that are

polarized by race.

Q Did you also analyze whether Latino voters' preferred candidates are able to win elections in the Yakima Valley area?

A I did.

Q If we could pull up Table 3, on Page 19 of Plaintiffs' Exhibit 1.

Dr. Collingwood, what does Table 3 show?

A This looks at the local contests I looked at. So this doesn't involve, say, some sort of statistical analysis; these are just the election results. And we know there's polarization going on in all of these contests, because I've already established that. Then I looked at whether they won or lost the election, the Latino-preferred candidate, whether they won or lost. And you can see here, they lost every single time.

Q Did you also conduct a performance analysis for Legislative District 15, in the enacted plan?

A I did.

Q And is it the same type of performance analysis that you performed on plaintiffs' demonstrative maps?

A Correct.

Q What did your performance analysis show, regarding block voting in the enacted version of Legislative District 15?

A The overall finding is that the enacted map is producing a

district where Latinos are their preferred candidate. In the ten contests that I have on Figure 11, they're getting blocked, seven out of ten times. This is across three different election cycles. And then the plaintiff maps, one, two, and three, the converse trend is true, where either the Latino-preferred candidate wins 100 percent of the time, or wins like nine out of the ten contests.

Q What is your overall conclusion on whether Latino voters are able to elect candidates of their choice in the Yakima Valley?

A Given previous elections, and then the way this enacted map is drawn, it's unlikely they're able to elect candidates of choice.

Q All right. Moving to a related topic. On Pages 29 through 32 of your report, you analyze voter turnout in the Yakima Valley region, as well as the Legislative District numbering. Would you briefly tell us about the election cycles in LDs 14 and 15?

A In this case, LD 14 would be occurring -- the state Senate run would be occurring contemporaneously with the presidential election. LD 15 occurs contemporaneously with the midterm. So if you're a political scientist, you know that turnout is almost always higher in presidential elections. It's basically a rule.

And in midterms, turnout is lower. And typically what you

see is turnout among minority populations is particularly lower than white populations. So what that ultimately redounds to is midterm elections, white voters have a turnout gap advantage relative to Latino voters.

So, like, we know that. But then I went and showed it as well, just to make sure. And so I showed that as well.

Q What analysis did you do in Plaintiffs' Exhibit 1, to analyze voter turnout levels in the Yakima Valley area?

A So I have the voter file of everyone who voted in a particular election year. And I also have estimates as to the overall share of those registered voters, and people who actually voted, the overall share of them who are white, and Hispanic. And so I can compare the estimates of all the white registrants, how many of them actually voted, and then the same thing for Hispanics or Latinos. Of all the Hispanic individuals in the voter file, what's the ratio of them that actually voted? So that's the analysis that I did. Other than the BISG part, there's no estimation going on.

Q Are the results of this turnout analysis presented in Tables 6 through 8, on Pages 30 through 31 of Plaintiffs' Exhibit 1?

A Yes, they are.

Q What does your analysis tell us about turnout levels, by race?

A The main point that we're looking at, depending on whether

-- either you're looking at citizen voting age population, as the denominator, or voter registration as the denominator. In midterm election years, white voters have a turnout gap advantage. In presidential, that gap starts to narrow. And so that could be potentially conclusive for who wins an election. It could potentially explain why, even though you have a 50.02 or a 50.04 Latino district, the Latino-preferred candidate is still losing.

Q If you look at Table 6, on Page 30, of Exhibit 1, what is the turnout advantage for white voters between the 2020 and 2018 general elections?

A So in the 2020 election here, I'm estimating 80 percent of white registrants voted. And then in 2018, I'm estimating about 65 percent of white registrants voted.

Latinos, on the other hand, are 59 percent in 2020 voting, and 38 percent voting in 2020 -- or 2018. That's an overall gap, the relative difference between one group, minus itself, and another group, minus itself. And then the difference of that, that gives white voters an estimated 6 percent advantage in voter turnout, if you're looking at '18 versus '20; 15 versus 14.

Q How would you categorize that difference of 6.1 percent, in terms of impact?

A That's notable. That could make a difference in who wins and who loses, for sure.

Q Following your initial report, did an election occur in Legislative District 15?
A Yes.
Q And did you analyze the November 2022 Senate general election in Legislative District 15?
A Yes.
Q Was that analysis in a supplemental report you produced in this case?
A Yes.
Q And your supplemental report has been marked and admitted as Plaintiffs' Exhibit 2, and you have a copy in that binder in front of you. At a high level, what did you examine in your supplemental report?
A I looked at the Legislative District 15 election, between Democrat Keesling and Republican Torres, using the same methodology that I had used in my other analysis. And the results show that racially polarized voting is still happening in that election. And the numbers are consistent, generally -- broadly consistent with the findings that I've found previously.
Q And are the results of your ecological inference analysis, reported on Figure 1, on Page 4 of Exhibit 2?
A Yes.
Q And did you include confidence intervals for your estimates in your report, as well?

A You can see the confidence intervals on the figure.
Q Were you able to conclude whether Latino voters had a preferred candidate in the Legislative District 15 Senate election in 2022?
A Yes.
Q And who was the Latino-preferred candidate in that election?
A The Democrat, Keesling.
Q Was it your observation, as a political scientist, that abortion was a driving issue in the 2022 election, across the country, following the Supreme Court decision in Dobbs?
A I mean, overall, certainly there was a lot of attention on abortion.
Q You nevertheless found that Latino voters in Legislative District 15 voted cohesively in the 2022 election, right?
A Yes. You can see the results for yourself. They're backing Keesling, or however you pronounce that.
Q Let's pull up Figure 2, on Page 5 of Exhibit 2. Can you describe what Figure 2 shows?
A This is what's known as a bibaric scatterplot. It's kind of the old-school way of doing racially polarized voting. So these are precincts. I believe Dr. Alford did some of this in his report, where you plot, basically -- let's take, for example, for the court, the top left figure. And what we're looking at is a trend line. You can see that red line;

that's the trend line. And what this is basically telling us is that areas where whites are predominant, they're not voting for Keesling. And then as you get more and more Hispanic, or more and more Latino, in terms of the share of the voters, the electorate that is Latino, the probability of voting for Keesling rises. And the converse is true, of course, that in very white areas, they're instead preferring Torres. And in very Hispanic areas, Torres isn't doing very well.

And what you see is the correlation coefficient between zero and one, where on the top left it's point 73, on the top right it's negative point 79. Any time you see a correlation of that size, that's statistically significant. And that is a strong measure, at that level of polarization.

So I just wanted to point that out, because I was just writing the one election, so I needed to, you know, buff it up a little bit, you know. So I wanted to add that. Otherwise, it's just page, after page, after page. It was too much. So one election. I put that in there.

Q Are the findings in your supplemental report consistent with a pattern of racially polarized voting?

A Yes.

Q You mentioned earlier that you reviewed Dr. Owens' reports in this case. What methodology does Dr. Owens use for his analysis of Latino voting patterns?

white voters give to particular candidates, in his reports?
A Well, that's the other thing that I found odd, which was, well, you say you're doing a racially polarized voting study, that entails looking at both Hispanics and whites, not just Hispanics. You're not doing a racially polarized voting study. You're simply doing a study of what Hispanics are doing. And that is not what anyone does.
Q You mentioned earlier that you also reviewed Dr. Alford's report in this case. Did anything in Dr. Alford's report change your opinions regarding the level of racially polarized voting in the Yakima Valley area?
A Dr. Alford ran a series of analyses. They all -- the ones I saw, for the most part, are very similar to mine. Very, very similar. And another thing I should point out, in Dr. Alford's report, he talks specifically about this no-vote issue, that if you're not using voter file data, you're using only precinct, and, say, CVAP, which is what some people do. And Dr. Alford often does that. In this case, he used VAP instead, voting age population.

One method is to -- you can basically create a dummy vote, and estimate the share, by race, of people who did and did not vote; by race.

So you have candidate one, candidate two, and then no vote; which you can estimate. He even talks about that as an important feature of the way that you conduct a racially

polarized voting analysis. So we're kind of in agreement, at least as a principle.

So his findings pretty much strengthen my conclusion, because -- basically finding the same thing.

Q All right. Let's go back to Plaintiffs' Exhibit 1, and we're going to turn to Page 28, Table 5.

At a high level, can you explain what analysis you conducted here?

A This is a decision timeline, with many different maps that were proposed, you know, over several months.

And what it shows, or a couple things, just as a broad picture, that the Commission did consider making this District 14, but ultimately settled on 15. The Commission also was aware of *Gingles* 1, here. As you can see, the Latino CVAP for both 2019 and 2020 goes up, and then down, over the 50 percent threshold, and then down at times.

Then also the Commission had available to them, at least it's my understanding, of how the different statewide candidates are doing in the different district configurations. And so the Commission could have drawn a district, they had it -- right? -- that would very likely perform for Latino candidates. And they settled on one that is quite a bit less likely to perform for Latino candidates, based upon what they could have done.

Q Let's turn to Page 31 of your expert report. Here you

conduct an additional analysis of the precincts included and excluded in Legislative District 15, in the enacted plan. Can you generally describe this analysis?

A So there were some Latino precincts that could have been in this district, that weren't. And so using my voter file data that I had already coded up and had that ready to go, I was able to compare the precincts that were included in the ultimate enacted map, versus those that were excluded. The population size. But also the voter turnout rate of whites and Hispanics in those very specific areas. Right?

I think the method that I'm using is maybe the only way you could do that, at that fine-grain level.

And what you basically see is that the -- even though they're all Latino-heavy precincts, the white advantage of voters who ultimately vote in the excluded precincts, is quite a bit lower than the white advantage, in terms of registration and turnout, and voting and voting power, than the included precincts; which is to say white voting power was higher in the included precincts, even though they're high-density Latino, relative to the excluded precincts.

Q Where were the included precincts that you analyzed located?

A This is Adams County. And I list out the precincts, 413, 415, 511, 512, and then Grant, 26.

Q Where were the excluded precincts that you analyzed

located?
A Those are in Yakima County. Wapato, Toppenish, and Mabton. Excuse my pronunciation. The report lists them. 901, 2101, 2102, 2103, 2501, and then 2502.
Q Are the results of this analysis reported in Table 9, on Page 32 of Plaintiffs' Exhibit 1?
A Yes.
Q What conclusion did you reach, from this analysis of included and excluded precincts in the Yakima Valley?
A It effectively -- the excluded precincts relatively limit Latino influence, relative to the included precincts, relative to the possible precincts, but that were excluded.
MS. HARLESS: Your Honor, I pass the witness for cross examination.
THE COURT: Thank you very much. And the first cross will be by Mr. Holt.
MR. HOLT: Your Honor, I've conferred with counsel for the AG. We think they might be able to complete their examination before lunch.
THE COURT: Okay. Mr. Hughes?

CROSS EXAMINATION

BY MR. HUGHES:
Q Mr. Collingwood --
THE COURT: Could you move that microphone a little closer to you?

MR. HUGHES: Of course. Of course.

Q Good morning, Mr. Collingwood. My name is Andrew Hughes. I'm with the State of Washington. So you were previously deposed in this case, correct?

A Correct.

Q And you said this in your deposition, but I just want to confirm, you have not been retained as an expert to analyze the intent of the commissioners, correct?

A Correct.

Q And in preparing your report, you didn't analyze communications among the commissioners or their staffers that discuss the substance of any maps, correct?

A I didn't look at the -- yeah, any e-mails that they're discussing things.

Q And you didn't look at text messages between the commissioners or legislative staff members?

A No.

Q And you didn't look at any commissioners' or staffers' depositions, did you?

A No.

Q Okay. Let's move to Page 28 of your report, which I assume you still have in front of you.

A Yes.

Q And let me move myself to Page 28, as well.

So on Page 28, you conduct a performance analysis for a

Q I believe on Page 6.
A Thank you. On Page 6, the Senate factors are -- the first one is looking at this history of discrimination. Second Senate factor looks at racially polarized voting. Third Senate factor looks at those present-day inequalities. Fourth factor looks at slating. The fifth factor considers how there are present-day inequalities. The sixth factor looks at the use of racial appeals. Seventh factor looks at whether there is a record of electing minority groups to office. Eighth is whether those elected officials are responsive to the needs of the minority community. And ninth looks at these tenuous policies.
Q Why don't you look at Senate Factors 2, 4 and 9 for your report?
A I was not asked to consider those factors.
Q Do you have any opinions about the presence of Factors 2, 4 and 9 in this region?
A No.
Q Describe for the court the methodology that you employed in your research for this report.
A So I use a historical methodology that is standard to historians. Specifically I use Busha & Harter's six-step methodology, where we identify a historical question, we then gather information related to that topic. We might form a hypothesis afterwards. We then organize our information. We

verify our sources. From there, we draw conclusions. And then we develop a meaningful historical narrative. And this way is a very systematic approach to gathering, verifying our information, and then analyzing that information so that we can produce a historically accurate narrative.

Q What kinds of sources did you consider, in your research?

A For this particular report, I used primary and also secondary sources. The primary sources, I use archival sources, government documents. I use the court records, state records. I use demographic reports, U.S. Census information.

And for secondary sources, these are interpretations of those primary sources, I use scholarly books, journal articles, theses, I used newspaper editorials, newspaper opinions.

Q Are the sources you relied upon, typical sources used by historians when doing similar research?

A Yes.

Q You start your report with a discussion of the shared history of Latinos in Central Washington. Could you give a high-level summary of what you include from the 20th Century, in that section of your report.

A In this report I describe, in detail, this long history of Latinos in the region. And I include this information to push back against this narrative that these are recent

immigrants, that they're not importantly historical actors. And specifically in the Central Washington region, what I see is that the agricultural economy has pulled these laborers to Central Washington, historically. What I find very interesting is that race has been used to recruit these individuals, and also exclude these individuals.

They're described as hardworking, docile, they have families, strong family values. But at the same time, they're also described as taking people's jobs. They're also described as folks that are protesting their working conditions. They're also described as clannish, folks that do not assimilate.

And with regards to the 20th Century issues, there are three examples I want to list here. The first is looking at this history of segregation in Central Washington. If you look, for example, the construction of the Hanford Nuclear Site, the U.S. Army Corps of Engineers will segregate Mexican American workers, and they would put them in Pasco, Washington, away from white workers.

You also see that there is Jim Crowe racism, a history of Jim Crowe racism in Central Washington. There are signs that said, "No Mexicans allowed, white people only." As a matter of fact, I conducted oral histories where folks were telling me about these signs.

In addition, you have racially restrictive covenants that

were used. And as a matter of fact, the University of Washington, Eastern Washington University, they are working on a racially restrictive covenants project, and they found that these racially restricted covenants were widespread in Central Washington.

It, again, contributes to this idea that there is segregation in Central Washington. And it also shows that harm is actually being done to these communities. We see that in the home ownership rates, that we'll discuss.

Q Turning to Pages 17 and 19 of your report, what are some of the examples that you give of Latino communities organizing against discrimination in the region?

A One of the things that I find, in looking at the history of discrimination, is that there are constantly moments where the Latino community pushes against inequality. One of those examples is looking at the formation. In the late 1960s, the Mexican American Federation, they'll come together, they'll organize the community, they'll encourage people to vote, to run for political office, take a stand on political issues.

At this very moment, you also see the creation of the United Farmworkers Union. They'll organize farmworkers, pushing for them to be paid a fair wage and treated humanely as well.

Q Could you describe for the court some of the Latino-created institutions, in the Yakima Valley region,

that you discuss on Pages 19 and 20 of your report?
A The United Farmworkers Union is going to organize farmworkers. They will create healthcare centers. For example, you see the creation of the Yakima Farmworkers Clinic being founded.

In addition, you also have individuals that are going to form Spanish-speaking radio stations. The Spanish speaking radio station is called radio KDNA, (spoke in Spanish), in Granger, Washington. These are important community institutions that are formed in response to the racial discrimination, and try to address some of the issues of inequality in the community.
Q We'll talk more about this later, as it relates to some of the later Senate factors. But could you briefly summarize the more recent history of Central Washington Latinos, that you discussed on Pages 19 and 21 of your report?
A One of the things that I continue to observe is that there is this history of inequality, especially towards Latino farmworkers.

In Burlington, Washington, a place called Sakuma Farms, there is evidence that the workers there, they were -- the supervisor used racist slurs against them, the supervisor treated workers inhumanely. And this has actually continued.

As a matter of fact, in the Tri-Cities area, we have farmworkers continuing to mobilize, push against that, their

inhumane treatment. And in 2022, they're organizing protests, demanding for their humane treatment. And pushing against this idea that they're just not laborers only, that they also want to be seen as important constituents in the Yakima Valley area, and Tri-Cities area as well.

Q Let's look at Senate Factor 1, the history of official voting-related discrimination, which you begin discussing on Page 21 of your report. Could you give me a top-line summary of the research you did on the history of official voting-related discrimination in Yakima Valley?

A Yeah. What I cover in my report is that there is evidence of official voting-related discrimination.

Q What did you find, specifically, regarding the use of English literacy tests in the region, prior to the passage of the Federal Voting Rights Act in 1965?

A What I uncovered is that English literacy tests were administered against Latinos, that they were used sporadically, but in a racially discriminatory manner, in Washington State.

Q What about after the passage of the Voting Rights Act?

A After the Voting Rights Act gets passed, they are suspended in the U.S. South. But for Latinos in Washington State, those continue to be enforced, here in the state. As a matter of fact, the U.S. Attorney General, John O'Connell, will argue that Washington State does not have a literacy

test, they have a literacy requirement. And those will be continued to be enforced here in Washington State.

Q Could you explain a little bit about the MAF advocacy and lawsuit that you write about in your report?

A The Mexican American Federation will start to mobilize the Latino electorate there in the Yakima Valley. And they will see that this English literacy test is a barrier to registering individuals. They will sue Yakima County, including the auditor, and will argue that literacy tests in Washington State are being administered in a discriminatory manner, and in violation of the Voting Rights Act of 1965.

Q Did that lawsuit end the use of literacy tests in Washington?

A The court will say something to the effect that a question on a voter registration ballot, can you read or speak English, is not, in fact, a literacy test. And these tests will be used until 1970.

Q What happened in 1970 that led to the discontinuation of their use?

A Yeah. So in 1970, you have the amendment revision of the Voting Rights Act, that will eliminate English literacy tests throughout the nation.

Q Turning to the section beginning on Page 31 of your report. At a high level, what did you find about the use of at-large systems of election in the region?

A At-large elections have been proven to dilute the Latino voting strength of the community in the Yakima Valley.
Q What did you find specifically about the use of at-large elections in cities in the Yakima Valley region?
A In cities, such as Yakima, at-large elections were used and they were challenged by the community. As a matter of fact, there will be a lawsuit challenging at-large elections, and at the summary judgment stage, the City will modify its election system from at-large to single-member districts.

And you also see this in the City of Pasco, where the population continued to grow and expand, and it was sizeable. And in this particular city, what you have is city officials will admit liability, and they will consent to modifying their election system from at-large to single member.
Q What about the use of at-large elections in the counties of the region?
A In the counties, which you also see, there's going to be lawsuits that are going to take place, that are going to argue against the at-large election systems in Yakima County and also Franklin County. And these will be settled, which will result in a modification of their election systems.
Q Looking at the section of your report beginning at Page 39. What did you find about the lack of bilingual balance and assistance in the region?
A The lack of bilingual balance has been an issue that

voters, with limited English skills, have had to deal with. And this has been a persistent issue.

Q You write about the history of bilingual ballots in the region, specifically from the period starting in 1972. What did you find about that period of time?

A Yes. What I covered in my report is that in Yakima County, bilingual ballots were, in fact, provided from 1976 to 1982. Afterwards, no ballots were provided at all. Only until 2002, when the Department of Justice steps in, Yakima Valley then pivots, starts providing bilingual ballots.

Q What about what you include regarding the Department of Justice lawsuit in 2004?

A In 2004, the Department of Justice will sue Yakima County, and the county will not admit liability, but they will follow the recommendations the Department of Justice has offered.

Q Turning now to Page 43, where you begin your discussion on Senate Factor 3. Could you provide an overview of what you found, related to this factor?

A Yeah. One thing that I covered, there are those historical and also contemporary voting procedures that actually hinder Latinos' ability to fully participate in the electoral process.

Q Explain your top-line takeaways regarding off-year elections.

A With regards to off-year elections, in Legislative

District 15, most of these state elections occur in non-presidential elections, when Latino voter turnout is the lowest.

Q Were you present this morning for Dr. Loren Collingwood's testimony?

A Yes.

Q Just to move things along, I'm going to ask whether your findings on Latino voter turnout in off-year elections are consistent with Dr. Collingwood's findings presented this morning?

A Yes.

Q In this section, you also discuss Latino voter registration, in Table 3.

If we could pull up Table 3, which begins at the bottom of Page 44, and continues on to Page 45. If we could zoom out of it.

What does this table show?

A Table 3 looks at the voter registration rates between Latinos and the white community. And from these tables, you see that the Latino voter registration numbers there are lower, compared to white.

Q How does that interact, the lower voter registration, how does lower voter registration interact with lower voter turnout for Latinos?

A Yeah. So in elections where -- in either non-presidential

or presidential elections, the Latino voter turnout is already low. And compounded with low voter registration rates, this makes it even -- this just adds to that effect of lower voter turnout.

Q Turning now to Page 45 of your report. What did your research show about the disproportionate signature rejection of ballots for Latinos?

A Yeah. So in my research that I conducted, I found that Latino ballots are rejected in places like Yakima County. Those Latino ballots are rejected seven-point times more than other voters. And in places like Franklin County, that number is three-point times greater.

Q Turning now to Senate Factor 5. What areas did you consider, when assessing the effects of discrimination on Latinos in the Yakima Valley region?

A In investigating Senate Factor 5, what I looked at are disparities among Latinos and the white community in the areas of housing, education, income, poverty, unemployment, health and also the criminal justice system.

Q And what counties did you consider, when doing your assessment for this factor?

A For this Senate factor, I looked at Adams, Benton, Franklin and Yakima County.

Q Did you also consider Grant County?

A Yes. I also considered Grant County.

Q Let's go through each of these categories that you address in the section, one-by-one. In your discussion starting at the very bottom of Page 46, and really starting on Page 47, what did you find as it relates to education in this region?
A Yeah, with regards to the education, there's this long history of discrimination against the Latino students and their families.
Q What did you find, when looking at what you identify specifically at the bottom of Page 47, as the history of segregation and discrimination in Washington's education system?
A For this particular section, I conducted some archival research, and I discovered there was an incident in North Franklin County, North Franklin School District. And in 1970, the county was actually hesitant to enroll migrant students.

As a matter of fact, they argued that these migrant students, they would be accepted only if they were placed in a segregated school. A labor leader raised the issue that this is, in fact, segregation. And these students would ultimately not be placed in North Franklin School District, they would be placed in the Kahlotus School District. But there, they didn't fare any better. They continued to be discriminated against.

One of the migrant advocates for the students raised the

issue that these students were essentially placed in a segregated school district, with inferior education. And that individual would later on be fired, for raising this issue.

Q Can you tell the court some of the more recent examples you give, regarding education, on Page 49?

A Another barrier that I continue to see that is facing the Latino students and their families, is the issue of lack of access to bilingual services. There is a sizeable Latino community with limited English skills, and those parents, when they are trying to help their children in the school district, communicate with teachers and other administrators, we found that there is evidence that there is limited bilingual services at some of these school districts.

Q Let's turn to Page 51 and pull up Table 4. What does Table 4 here show?

A Table 4 looks at the disparities between white and Latinos with regards to education. And the table there shows the high school -- those individuals that have graduated from high school, and those individuals that have obtained a bachelor's degree or higher.

Just for example, there in Adams County, with respect to bachelor's degree, Latinos have -- only 3.6 percent have a bachelor's degree, in comparison to the white community, which is 26.2 percent.

Q Turning now to the section on housing. Could you give an overview of your discussion that runs from Pages 51 to 54, on the effects of discrimination, as they impact housing for Latino farmworkers, specifically?

A As I was conducting my research related to housing, something that I noticed was that on Page 52, you have the Washington Department of Community Trade and Economic Development. They will actually write that farm-worker housing is substandard, it's overcrowded, and that there's actually a need for farmworker housing.

But as efforts got under way to develop farmworker housing, you see that there is resistance, in fact, from the local white community. And on page No. 53, there's the Washington State Human Rights Commission. And they write, "They were increasingly concerned about race and national origin discrimination against farmworkers in the area of housing." And there's evidence there that shows how the local white community was hesitant for there to be farmworker housing in these neighborhoods, making a case that there's going to -- they're going to create areas with high concentration of farmworker housing, low-income housing.

Q Let's turn to Page 55 of your report, and look at Table 6 on home ownership rates. That also continues on to Page 56. There we go. What does this table show?

A Yeah. On Table 6, I show the inequalities between white

and Latino home ownership rates. And all the counties that I've listed there, Adams, Benton, Franklin, Grant, and Yakima Counties.

Q What do you observe, from those home ownership rates?

A For Latinos, their home ownership rates are significantly lower than the white community. Again, this has, in part, contributed to this long history of discrimination history, that harkens back to those racial covenants that were in place.

Q Turning to your discussion on socioeconomic status, employment, which begins on Page 56. What did you generally find about this factor?

A On Table No. 7, I show that there are significant disparities, as it relates to poverty levels, and also median household incomes across the five counties that I've listed there.

Q What about Table 8, at the top of Page 58.

A On Table No. 8 there, I show the disparities between white and Latinos, as it relates to unemployment. And once again, there's these inequalities that you see with Latinos having higher unemployment rates, compared to the white community.

Q Looking now at your section on health, and specifically turning to Table 9, on Page 59. What did you find related to health disparities experienced by the Latino population?

A Yes. As I was looking at health and the disparities

there, one thing that I observed was that the Yakima Farmworkers Clinic, and the Sea Mar Clinic, which served the Latino population, they reported that Latinos sought healthcare mostly in emergency situations, rather than preventative care. And that is evident there in Table 9, that shows that Latinos, again, across the five different counties, have a lower uninsured healthcare -- or, uninsured healthcare rates.

Q And for the record, you said lower uninsured healthcare rates. Do you mean lower rates of being insured?

A They have lower rates of being insured. This table shows a high percentage are uninsured, compared to whites. Thank you.

Q What did you find, as it specifically relates to the impact of COVID-19 on the Latino community in the region?

A Yeah. With regards to COVID, Latinos made up 13 percent of the state's population. But as a matter of fact, they represented over half of the state's COVID cases.

Q Your report included some information about farmworkers, specifically, being impacted by COVID-19. Could you elaborate on that?

A Yeah. One of the reasons for those high COVID numbers, was in part due because some agricultural employers did not want to provide on-site testing for their labor force. As a result, what you see is evidence reported by the Tri-Cities

Herald and also the Yakima Herald, that there were these outbreaks that were occurring at these warehouses.

And in response to those outbreaks, you're going to see that those workers will protest, saying that they are working in unsafe -- in an unsafe environment.

Q Turning now to the criminal justice section of your report, which begins on Page 60. What do you generally find about how the criminal justice system impacts the Latino community?

A The criminal justice system is inequitable towards Latinos. And some of those reasons could be limited economic opportunity, stereotyping, ineffective legal representation.

Q What does Table 10 on Page 61 show?

A Yeah, Table No. 10, you have the Latino rate of incarceration in select counties. And the rate of incarceration in these four counties that I list here are actually higher than the population in these counties.

Q From Pages 61 to 62, you discuss a 2021 report titled "Race and Washington's Criminal Justice System." What information did you draw from that report?

A From this particular report, what I observed was that in Benton and Franklin Counties, Latinos were 1.9 times more likely to be killed by law enforcement. And that number in Yakima County was 2.5 times.

Q If you could repeat, what was the number for Benton and

Franklin County?
A Benton and Franklin Counties was 1.9 times more, and in Yakima County is 2.5 times more.
Q What overall conclusion did you come to regarding Senate Factor 5, and the effects of discrimination on Latinos in the region?
A There is this long history of discrimination. It's pervasive. It's entrenched. That creates present-day inequalities in the areas of housing, income, poverty, education, health, and the criminal justice system.
Q What evidence do you have that any of these factors that you've discussed, actually hinder the participation of the regions' Latinos in the political process?
A I didn't provide a specific example. But what I observed is that these present-day inequalities, they all are creating barriers for Latinos. 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.
Q Let's turn now to Senate Factor 6. What did you find regarding the use of overt or subtle racial appeals in this region?

A In the Yakima Valley region, we see examples of direct and indirect racial appeals.
Q What examples do you find of county officials using racial appeals?
A As it relates to county officials, you have examples of Ron Anderson, he's on the Board of Yakima County Commissioners, and he shared on his publicly accessible Facebook, information that illegals, aliens, illegal aliens were supposedly stealing elections. And these terms here are racial slurs that are yielded against the Latino community with -- actually, without knowledge of their legal status.
Q Let's pull up Page 64.
Dr. Estrada, what is the image on this page?
A On Page 64, there you have this Ron Anderson sharing a post, and it reads, "Illegals being seduced into America by Democrats, to steal our elections. Act of treason. Arrest all involved."
Q Do you provide other examples, in your report, of other county officials also issuing racial appeals?
A Yes. You also have examples where candidates that are running for office, they are using terms such as "colored," and "coloreds" as well.
Q I think you might be referring to the comments from former State Senator Jim Honeyford, which you discussed on Page 67. Could you tell us more about that?

A Yes. On -- with respect to Senator Jim Honeyford, this is a candidate who is using these terms "colored" and "coloreds." And, again, these are terms that were used during Jim Crowe segregation, and terms that the African American community actually finds offensive.

Q You also write about Latino candidates and Latinos campaigning for office, experiencing what you identify as racial animosity. What do you include in your report on that?

A Yes. So in regards to Latinos actually campaigning and how they experience racial animosity, I write in my report -- as a matter of fact, there is a candidate, Dulce Guiterrez, who was actively campaigning, passing out information. A white woman will assault her, tell her to go back to Mexico.

Q Turning now to your section on Senate Factor 7, beginning on Page 69 of your report. What did you find about the extent to which Latino candidates have been elected to public office in the legislative districts in this region?

A What I uncovered, is there is a weak record of electing Latinos to state public offices in the Yakima Valley region. Specifically I'm looking at legislative districts, and from the Central Washington area. And at the time that I wrote this report, there was only two that had ever been elected.

Q Are you aware that since the drafting of your report, a Latino candidate, Nikki Torres, has been elected as the state

senator representing LD 15?
A Yes.
Q Does the election of Nikki Torres in LD 15, change any of your opinions about the extent to which Latinos have been elected in the jurisdiction?
A No, it does not.
Q Why not?
A There are now only three that have ever been elected. And if you look at the many elections that have happened in Central Washington, three is still a very small number. And this is across time. That is still a very, very small number, compared to the population as well.
Q What did you find regarding county elections in the jurisdiction, which you discuss on Pages 70 and 71 of your report?
A Yeah. In county elections, what you have is, for example, in Yakima County, with regards to the election of folks to the county commissioner seat in Yakima County, there's essentially only been one person that is elected to the Yakima County Board of Commissioners, although there is evidence of people who have run. And in the case of Benton and Franklin County, excuse me, there has never been a Latino elected to the Yakima -- to the Franklin County Board of Commissioners.
Q Why did you choose not to include city and town elections

in this section of your report?
A Yes. As I was looking at the legislative districts, and also the county elections, it made more sense to compare the geographies of the legislative districts to the county districts, rather than look at those smaller communities.
Q Turning to your discussion of Senate Factor 8, what did you consider when assessing whether the region's legislative elected officials are responsive to the needs of the Latino community?
A Yeah. In regards to those elected officials, I found evidence that they are, in fact, not responsive to the needs of the Latino community. And I looked at the legislative voting record of those individuals from Districts 14, 15 and 16.
Q What did you use to assess whether or not those legislative officials were responsive?
A Yes. So I used information from the Latino Civic Alliance. And they are an organization that promotes civic engagement and advocacy. And they submitted a list of bills to legislators. In 2022, what you observed is those bills that are going up to -- for a vote, by and large they were rejected by Legislators from 14, 15 and 16.
Q One of the bills you examined was SB-5597. Briefly, what was SB-5597?
A This was a proposed update to the Washington Voting Rights

Act. It was a bill that was supported by 93 different organizations across 20 counties, supported by groups from the Yakima Valley region, and also the Tri-Cities area as well.

Q What did you find regarding Yakima Valley region, state legislators in SB-5597?

A It was opposed by the Senators in Legislative Districts 14, 15 and 16.

Q Dr. Estrada, based on the information in your report and what you've testified to today, what is your ultimate conclusion about the Senate factors that you assessed in this case?

A From the Senate factors that I looked into, there is sufficient evidence that the totality of circumstances are present there, and that Latinos in the region have historically and presently continue to face barriers to vote and participate in the political process.

MS. LEEPER: Your Honor, I pass the witness.

THE COURT: We're going to probably take our afternoon break now. But let me just ask Dr. Estrada a couple of questions.

You know, yesterday I was just going through my e-mails, and I got this beautiful picture of a new Ninth Circuit Judge Mendoza, who was the first Latino judge in the Benton/Franklin area, and a picture of him with Honorable

Sonya Rodriguez True. When I first started out as a state court judge, there were no Latino superior court judges in the Yakima Valley area.

The last two, current, who we'll see on Monday, and the previous chief judge in the Western District of Washington, Ricardo Martinez and David Estudillo are Latin. You probably -- when you got your Ph.D., there weren't many Latin American doctorate professors. I don't recall seeing any when I was in grad school. Change is coming in these important areas. We have a Latino as the Chief Justice of the Washington Supreme Court, in Steve Gonzalez. What does that say, if anything, about how the situation is going to change, even if it hasn't changed yet?

THE WITNESS: I was recently asked to give a keynote talk at the Phi Alpha Theta conference. This is a conference that brings in historians from the region. And one of the things that I expressed to them is that we have this belief that the arc of history bends towards justice. And I reminded those students, and audience members, that it has to be bent towards justice, and people have to mobilize, people have to organize to change those institutions, and to create opportunities, where the ballot will be more accessible.

THE COURT: And looking at your chart on Page 51. It jumped out at me that Benton County had a 72 percent Latino high school graduation number, which is quite a bit higher

A I do provide a shared history of Latinos in Central Washington. And it's really related to this history of discrimination in the area that they faced.
Q Understood. And you refer to the Tri-Cities area. Is Yakima -- Yakima is not part of the Tri-Cities area?
THE COURT: It's not, right.
A No. No.
Q Now, as you reviewed this, has Pasco and Yakima ever been included in the same legislative district?
A No, not that I'm aware of.
Q Now, in regards to the Senate factor that discusses racial appeals and campaigns. Do you remember that?
A Yes.
Q And you've discussed a handful of racial appeals that were made from the voter to the candidate. Do you remember those examples?
A Yes.
Q You would agree that the Senate factor primarily focuses on racial appeals from the campaign, from the candidate to the electorate, not the other way around, correct?
A Yeah. From reading that particular Senate factor, there are racial appeals being made by candidates and also elected officials.
THE COURT: Right. But if some kook yells something at a candidate, just a voter or citizen, that's not the same

as an elected official or another candidate?

THE WITNESS: Yes.

THE COURT: Sure.

Q Plaintiffs' counsel spoke to you about why you did not include analysis of city races in your report. Do you remember that?

A Yes.

Q And can you restate for me the reason you gave as to why you focus more on legislative races, than local elections at the city level?

THE COURT: Legislative and countywide races.

Q Yes. Legislative and countywide races?

A In those legislative races, and also the county races, there is a weak record of electing Latinos to those state and county public offices. And I think I -- at the time that I wrote this report, there was only two Latinos that had been elected to state public offices, legislative state public offices.

THE COURT: But why didn't you look at city races too, is the question?

THE WITNESS: Yeah, I looked at -- when I wanted to -- I wanted an adequate type of comparison, was to look at the geography of a legislative district and compare that to the geography of a county district. I didn't include those city races. Those city races, from Grandview, Washington,

those places have large, significant, sizeable Latino majorities. But that's not necessarily the case when you zoom out and look at the county.

Q Understood. But you would agree that Latino candidates have been elected at the city level to a higher degree of success than to statewide or countywide races?

A I'm not sure in regards to the overall success in the Yakima Valley, but I am familiar that Latinos have been elected to the city council, also the mayor's office.

Q You said you're from Grandview, correct?

A Yes.

Q Were you aware that the mayor and three of the seven city council members are Latino, in Grandview?

A I'm aware that there's a history there of them being in office, yeah, and that this is my home community. Yes.

Q And another city that's important in the Yakima Valley is Granger. Are you aware that the mayor and four of the five city council members in Granger are Latino?

A I'm not aware of the makeup there.

MR. HOLT: I'm not going to go through all the cities, Your Honor.

THE COURT: There's only about five.

Q There's one more. Are you aware in Mabton, that the mayor and five of the five city council positions are held by Latinos?

A No. If you're giving me that information, I accept it as truth. But, again, I think the cities there in the Yakima Valley, they have sizeable, significant Latino majorities there. But, again, when I zoomed out and looked at those county and legislative districts, that's a different demographic population there.

Q I want to return back to Page 6 of your report, where you summarize the Senate factors and look at the language for Senate Factor 7. Just let me know when you're there.

A Page No. 8?

THE COURT: Page 6.

A Okay. Yeah, I'm there.

Q And you had this in quotes, and you're citing to the letter that's quoted in *Gingles*, correct? That's what you're quoting there?

A Yes.

Q It says, "The extent to which members of the minority group have been elected to public office in the jurisdiction." Is that a correct statement?

A Yes.

Q What do you view the term "in the jurisdiction" to mean, in this context, in your analysis for this report?

A In my report I looked at the Legislative District 15.

Q And earlier you said the fact that the only election that has taken place under the challenged map, Legislative

District 15, elected a Latino by nearly 40 percent of the vote, was not probative for you under this factor? Is that an accurate statement that you said earlier?

A I didn't look into that election in this report. I'm not sure if she was a candidate of choice. Is that what you're asking?

Q The Senate factor is the extent to which members of the minority group -- so it's referring to the ethnicity of the candidate, not the choice of the voter, correct?

A Yes, I think I understand your question.

Q I'll rephrase it, so I just want to make sure. The 2022 election, the only election that's taken place in LD 15 under the challenged map, elected a Latina, just under -- by nearly a 40-point margin between her opponent. And it's your testimony that is not probative as to Senate Factor 7; is that correct?

A What I say, that is one election. But I also look at the history of electing Latino candidates.

Q Understood. Thank you.

Now, would you agree with the statement that in terms of the racial concerns associated with the Latino community in Yakima and Washington, generally, that there's been improvement in the last 20 to 30 years in that area?

A I think it would be hard to answer. Improvement in which areas?

trying to write this piece.
Q You said, somewhere in that answer, that we don't get to make the final decision.
A No.
Q What did you mean by that?
A Yeah. I mean, we have an appointed commission that are there knowing what each member's interest is. They may interview people. So they do interviews to try to get a sense. But once they're appointed, they are independent, they are supposed to take what the person in the group that appointed them, know what their interests are, but they're there to do a job, and they're there to be impartial, to be able to interpret, to the best of their ability, what will be aligned with the laws, but also what will create democracy in the best sense of that word, and make sure that that value of each person has a vote, and making sure that those are not weighted in a way that allows certain people, or certain folks who have an outside vote, when it comes to state -- you know, comes to any of the levels of democracy in our state.
Q I have a few sort of basic questions about this document, just to sort of continue to establish what this is. What's the title of the document?
A It is, Latinx Community Needs Fair Redistricting Map.
Q And just to clarify the timing, when was it published?
A November 11, 2021, at 10:28 a.m. And then did an update,

which I'm not sure what the update was.

Q Was one of your goals, in publishing this op-ed, to put anyone on notice about the requirements of the Federal Voting Rights Act?

A I mean, I think -- I'm not sure what you're asking there. But, I mean, I think part of it was that I know that -- I think one of my interests was, I don't know if it answers your question, was that at that time there is a watering down into lots of different suits going on at the national level, to say that we've done well, and we don't have to have these guardrails anymore to be able to ensure that we have fair representation, that there is no longer any attempts to -- or any disparities in voting across the country.

And I think a lot of us in Washington State think that we do things well. We are progressive. We have good representation. And I think it was important for me to say, like, even here in Washington, we need to make sure that we are making sure that every vote counts, and that every group of folks in Washington State have fair representation.

And so that was my point was, I was -- it was not necessarily to put anyone on notice, except for the people of Washington, is that we have a moment, and we should be paying attention, and we should be making sure that we are following the law, and the spirit of this law, as we are thinking about our lines. Because there is definitely a lot of political

pressures on those commissioners, and a lot of people wanting certain outcomes.

And to me, what was most important is that we stay focused on the law, and the values that are embedded in our Constitution, and how sacred the right to vote is, and how this is something that happens, you know, once every ten years, and how important it is for us to make sure that we're doing the best job we can.

Q Does this op-ed reflect your views at the time that you published it?

A Yes.

Q Does it continue to reflect your views today?

A Yes.

Q I want to turn us to Page 3, the second paragraph from the end.

Do you see the paragraph that starts, "Because Latinx voters."

A Yes.

Q Can you read that first sentence of that paragraph for me?

A "Because Latinx voters across Central and Eastern Washington face disproportionate barriers to electing officials to represent issues important to them in Olympia, my Latinx colleagues and I bring their priorities to the table year after year. As the Redistricting Commission wraps up its work, I stand with the Latinx community, in the Yakima

Valley, and call on the Commission to approve a plan that ensures their fair and equitable representation for the next decade."

Q I want to draw your attention to that first sentence that you read. What did you mean by the sentence that starts, "Because Latinx voters across Central and Eastern Washington face disproportionate barriers to electing officials to represent issues important to them in Olympia"?

A Yeah. So, let's see. I mean, I think some of the barriers that I refer to are historic. It's how, when we had our first Latina city council people in Yakima, what I learned from them was that in order -- like, who got to have sidewalks, who got to vote and decide about that were people that owned property. And so the people that are renters, the people that are living in labor camps, would not be allowed to have a say in those circumstances.

So there's a bias towards land ownership, historically, and how lines are drawn, who gets to vote, who gets to have a say in their democracy. If you don't feel like you can even have a say about sidewalks, it creates a barrier for you to actually believe that your vote would matter, even if you could vote.

We also, of course, have federal laws, especially around immigration, that continue to make it the reality that people that have lived here their whole life, are paying taxes, are

working in our economies, are educated in our schools, are not allowed to vote. And the Latino community is disproportionally represented in individuals that don't have the opportunity to get green cards in the State of Washington, yet live here, work here, have children here.

And so there's already that barrier that's in place as well.

Language barriers, and whether there's -- whether things are put in language -- and, again, the barrier, especially if you look at some of these districts, and you look at high school diplomas, education level, the ability to actually read Spanish, let alone English, all of these are barriers that make it harder for Latino voters to be able to believe that their vote counts, have access to vote, and let alone, to be able to have someone that fully represents their interests, their perspectives, their experiences.

Q Are you familiar with the Washington Voting Rights Act?

A Yes, I am. That piece of legislation had been around before I got to the legislature. But when I got there, the chair, Senator Hunt, graciously encouraged and supported me to be the prime sponsor of the legislation in the Senate.

Q Is it fair to say it was one of your main legislative priorities?

A Yes.

Q What was the purpose of the bill?

Q -- the citizen voting age population in Washington State?
A No.
Q If you knew it was 8.7 percent, actually, as a measure of citizen voting age population, Latinos had more members of the legislature, on a percentage-basis, than citizen voting age population in the state, would that change your opinion at all about the sort of progress of representation in the legislature?
A I would say that the west side of the state is doing more than our fair share, to represent the rest of the state.
Q Okay. Fair enough. A couple other questions here. You told a few stories about Senator Honeyford. You mentioned that you heard from folks from his area who were frustrated. But, you know, obviously, are any of them here under oath?
A I don't think so. I'm not here -- I'm the only witness right now.
THE COURT: That is a rhetorical question. And we have no place in the courtroom for rhetorical questions. So that will be the last one.
Q Senator, do you suppose that it is possible that the folks that you had heard from, simply had political disagreements with Senator Honeyford, and thought that they might find a political ally in you, and that was why they were approaching you, sort of as if somebody from -- somebody who lived in Seattle felt they weren't being represented by their Seattle

official, and came to an official in South King County to complain?

A You know, no. I don't actually think that's exactly the case.

I've gone to labor camps. I just went to meet with asparagus workers, right after session. And as soon as people leave, and the only person there is speaking Spanish, and is not a boss -- like, I left, and someone was left behind to talk with them. They fear. They live in fear. And they want a job. They want to be able to have any income they can. And they are not going to risk that, if they don't think that -- if they do do something and speak out, that there's going to be someone to have their back. So, no, I don't agree with what you asked.

Q Okay. One other topic that came up, you know, you mentioned that you thought it was important that folks have lived experience they can share. Do you know the kind of professional pre-legislative backgrounds of the legislators from the 14th and 15th District?

A Current or past?

Q Either one.

A Well, yes, I do. We have a small business of cabinetmaking. We have a police officer. We have an educator. We have, let's see -- in education fields. I don't know everyone's past. Of course I have sat with our

newest member and gotten to know them a little bit, and they're in education right now, but I don't know of her early first jobs.

Q Who was that you're talking about?

A Senator Nikki Torres.

Q I know this is her first year, she's had 105, 106 legislative days under her belt, but do you think she's doing a good job?

A She's very cordial. I enjoy sitting next to her in Ways and Means. I try to be helpful, because, as you know, you know, at the end of the day, the majority of the pieces of legislation we work on do have bipartisan support. There are lots of places for agreement. And I think, you know, she's a very cordial person. I think that we all -- there's a personal level, then there's a voting record. And I'm looking at her voting record, and I'm not quite sure yet.

Q Do you think that her constituents and her voters will look at her voting record?

A I hope so.

Q If she's reelected with a resounding majority, do you think that's a good signal that she's doing a good job representing her district?

THE COURT: It's irrelevant.

A It's irrelevant.

Q The last question, I don't know your whole bio, so I was

listening to understand. I think you mentioned that you grew up in Seattle, that your dad lived there. Obviously you represent the 37th District, which is South Seattle, nearby communities. You mentioned that you lived in Oregon. But I did not catch, how long if ever did you live in the Yakima Valley region?

A I have not. Because my father was a farmworker, followed the crops up to -- through Michigan, first. Then he left segregated Southern Texas, and came as a 14-year-old to work in the fields in the Willamette Valley, like a lot of southern Texans at the time. A lot of the same migration folks that come from the Rio Grande Valley and from Nuevo León, also to Eastern Washington. But I have no direct connection. And that's why I find it very frustrating that I, who have no direct connection with the Yakima Valley, am often the person that's advocating for policies that support and benefit the people of Yakima Valley.

THE COURT: Okay. Thanks. Ms. Sepe, you have a couple of little questions? Short, I mean.

CROSS EXAMINATION

BY MS. SEPE:

Q Good afternoon, Senator Saldana. My name is Cristina Sepe, and I represent the defendant, State of Washington, in this lawsuit.

I understand that you're also a member of the Latino

Democratic Caucus; is that correct?
A Yes.
Q What are some of the legislative priorities for the caucus?
A Well, we just formed, this year, and I am a mere member of it. The chair is Representative Ortiz-Self. The vice chair is Representative Ramos. But I do believe that there was a follow-up Voting Rights Act bill that our newest Representative, Sharlett Mena, that was the prime sponsor. And I was supportive of that. I know that was one of those we highlighted as priority.
Q And earlier in your testimony you talked about speaking on the floor regarding House Concurrent Resolution 4407, and that was the resolution to amend the redistricting plan and have the legislature adopt it; is that correct?
A Yes.
Q And Mr. Stokesbary had you read a part of the statute, I believe it was from RCW 44.05. And after reading that, would you agree that the legislature has the authority to amend the redistricting plan?
THE COURT: Limited authority, but authority.
A Yeah, I mean, it says that we do. And I think that we have that limited authority. And I think that's the part that was a question for me, as having -- this is the first time, of course, that many of us went through it. But of

Nos. 23-35595 & 24-1602

IN THE 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,
and

JOSE TREVINO, ISMAEL G. CAMPOS, and State Representative ALEX YBARRA,
Intervenor-Defendants-Appellants

On Appeal from the United States District
Court for the Western District of Washington
No. 3:22-cv-05036
Hon. Robert S. Lasnik

PLAINTIFFS-APPELLEES' SUPPLEMENTAL EXCERPTS OF RECORD VOLUME 5 OF 5

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Totality of the Circumstances Analysis Under Section 2 of the Voting Rights Act

Soto Palmer, et al., v. Hobbs, et al. No.: 3:22-cv-5035 (U.S. District Court for the Western District of Washington)

Josué Q. Estrada, Ph.D.

Central Washington University

July 27, 2022

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Background and Qualifications

I am an Assistant Professor in the Department of History at Central Washington University (CWU) in Ellensburg, Washington. At CWU, I teach and develop courses on voting rights, citizenship, race, Latino people, and the Pacific Northwest. With respect to my research, I investigate the history of Latino voter suppression and race in the United States.

I received my doctoral degree in history from the University of Washington (UW) in Seattle, Washington in 2021, with a focus on 20th century U.S. history and voting rights. I hold a Master's in History from the UW and a Master's in American Studies from Washington State University in Pullman, Washington. I received a Bachelor's in American Ethnic Studies from the UW in 2005. Throughout my academic training, I have methodically studied, researched, and written extensively about the history of Latinos in the United States with an emphasis on the Pacific Northwest.

At the UW, I completed a dissertation titled, "'We Can't Be Ignored Anymore': A History of the Latinx Voting Rights Movement, 1960-1975."[1] This research investigates how Puerto Ricans and Mexican Americans have used distinct organizational and political tactics to win voting rights, specifically to expand the coverage of the Voting Rights Act. To explore this history, I conducted extensive archival research in five states including Washington State, studied the congressional debates on voting rights from the 1960s and 1970s, reviewed Spanish and English newspapers, examined government records, and consulted hundreds of secondary works related to voting rights.

While working on my dissertation, I published an article titled, "Democratizing Washington State's Yakima County: A History of Latina/o Voter Suppression since 1967" in *We*

[1] Josué Q. Estrada, "*'We Can't Be Ignored Anymore': A History of the Latinx Voting Rights Movement, 1960-1975*," (PhD diss., University of Washington, 2021).

are Aztlan: Chicanx Histories in the Northern Borderlands.[2] I found that suppression of Mexican American voters by way of English literacy tests, including in Yakima County, was sustained due to national, state, and local factors. Even though the State of Washington's literacy test was ultimately removed, Latino voters remained marginalized as a result of racial discrimination, at-large election systems, and county officials who had no interest in increasing Latino political involvement. Starting in the 1970s, Latino candidates more frequently ran for elected office, but were largely defeated by white candidates.

Additionally, I have delivered conference papers related to Latino voter suppression at local, regional, and national academic conferences such as: the Pacific Northwest History Conference, the Western History Association Conference, and the Labor and Working-Class History Association.[3] I have also published book reviews in my areas of specialization and served as an associated editor for the *Pacific Northwest Quarterly* journal. A true, accurate and detailed copy of my curriculum vitae is attached. My rate of compensation for work on this case is $250.00 per hour.

Given my background, attorneys for Plaintiffs in this litigation asked me to conduct an analysis of the "totality of the circumstances," or Senate Factors, relevant under Section 2 of the Voting Rights Act and outlined in a 1982 report by the U.S. Senate Committee on the Judiciary ("Senate Report").[4] As outlined by the Senate Report, the Senate Factors include: (1) "the history

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[2] Josué Q. Estrada, "Democratizing Washington State's Yakima County: A History of Latina/o Voter Suppression since 1967" in *We Are Aztlán: Chicanx Histories in the Northern Borderlands*, edited by Jerry Garcia (Washington State University Press, 2017).

[3] "Citizens with Foreign Tongues: A History of Latinx Voter Suppression in Washington State," Presented at *What Happens in the West Doesn't Stay in the West*, Western History Association, Las Vegas, NV, October 2019; "Democratizing Washington State's Yakima County: A History of Latino/a Voter Suppression since 1967" Presented at *Scales of Struggle: Communities, Movements, and Global Connections*, Labor and Working-Class History Association, Seattle, WA, June 2017.

[4] "Section 2 of the Voting Rights Act," The United States Department of Justice, https://www.justice.gov/crt/section-2-voting-rights-act.

of official voting-related discrimination in the state or political subdivision;" (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 voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority-vote requirements, and prohibitions against bullet voting;" (4) "the exclusion of members of the minority group from candidate slating processes;" (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) "the use of overt or subtle racial appeals in political campaigns;" (7) "the extent to which members of the minority group have been elected to public office in the jurisdiction."[5] The Senate Report included two additional factors: (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."[6] As the Senate Report states, "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other."[7]

[5] S. Rep. No. 97-417, at 29 (1982); *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986).
[6] *Id.*
[7] *Id.*

Summary of Findings

My report examines whether Senate Factors 1, 3, 5, 6, 7, and 8 are present in the Central Washington region, particularly in the Yakima Valley and Pasco areas. In conducting this analysis, I also examined the shared history of Latino communities throughout the region. I offer the following opinions:

1. Shared History of Latinos: There are numerous similarities and shared interests among Latino communities in the Yakima Valley and Pasco areas. In addition to sharing a common language and cultural traditions such as Cinco de Mayo celebrations, many of the regions' Latinos reside in rural, agricultural communities where their labor is vital to the economy.[8] Latinos' presence in the region has been continuous for decades and, in both rural and urban communities, their experiences have been marked by racial discrimination in the areas of politics, labor, education, and health care, among other areas.
2. Senate Factor 1: Latinos in Washington, especially in the Yakima Valley and Pasco areas, have been and continue to be burdened by a long history of official racial discrimination in voting.
3. Senate Factor 3: Washington State and the political subdivisions in the Yakima Valley and Pasco areas have historically used voting practices and procedures, including off-year elections, signature matching, at-large elections, and English literacy tests, that tend to enhance the opportunity for discrimination against Latinos.
4. Senate Factor 5: The lingering effects of discrimination in the Yakima Valley and Pasco

[8] "Almost 51.3 percent of Adams, Yakima, Chelan, Douglas, Grant, Walla Walla, and Franklin County households speak Spanish." See, "The History of Language in Washington State," Language Network, November 5, 2019, https://www.languagenetworkusa.com/blog/the-history-of-language-in-washington-state.

areas are reflected in significant present-day disparities with regard to income, unemployment, poverty, education, housing, health, and criminal justice. These socio-economic disparities bear directly on the ability of minorities to participate in the electoral process.

5. Senate Factor 6: Political campaigns in the Yakima Valley and Pasco areas have been marked by direct and indirect racial appeals.
6. Senate Factor 7: Both the Yakima Valley and Pasco areas have a weak record of electing Latino candidates to public office.
7. Senate Factor 8: Elected officials in the Yakima Valley and Pasco region, particularly in state legislative districts 14 and 15, are not responsive to the needs of the Latino community.

In light of this evidence, and the analysis I provide below, I conclude that the totality of the circumstances shows that the current configuration of state legislative districts hinders the equal opportunity of Latino voters in the Yakima Valley and Pasco areas to fully and effectively participate in the political process.

Note on Terminology

In this report, I use the terms "Latino/Latinx" and "Hispanic" as an umbrella term for all individuals from Spanish-speaking nations from Latin America and the Caribbean. Persons who identify as "Latino/Latinx" and "Hispanic," according to the U.S. Census Bureau, "are those who classify themselves in one of the specific Hispanic or Latino categories listed on the decennial census questionnaire and various Census Bureau survey questionnaires – 'Mexican, Mexican Am., Chicano' or 'Puerto Rican' or 'Cuban' – as well as those who indicate that they are

'another Hispanic, Latino, or Spanish origin.'"[9] I apply the national-origin terms whenever possible. Specifically, for persons of Mexican descent, I use several terms to indicate differences in identities and citizenships, including "ethnic Mexicans," "Mexican nationals," "Mexican Americans," and "Chicanas/os." "Ethnic Mexicans" describes people of Mexican ancestry living in the United States, regardless of their citizenship. "Mexican national" refers to a person with Mexican citizenship residing in the United States. "Mexican American" describes a person of Mexican descent born in the United States. The term "Chicana/o/x" is also used to describe a person of Mexican ancestry who was born in the United States but is used when the historical actors or community specifically used this term to identify themselves and their community. Beginning in the late 1960s, "Chicano" was a term embraced by youth to gain political power while rejecting racism, assimilationism, and colonialism in the United States. Lastly, I use "undocumented" to describe Latino migrants without official permission to reside or work in the United States.

In the Yakima Valley and Pasco region, a large portion of the Latino community is composed of persons of Mexican ancestry, but they have a shared history and common interests with other Latino groups creating a collective identity and consciousness.[10] Here, and across the U.S., Latino people tend to see themselves as part of a large whole because of issues related to immigration, legal status, a history of colonialism, race, class, and language.[11]

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[9] "About the Hispanic Population and its Origin," *United States Census Bureau*, https://www.census.gov/topics/population/hispanic-origin/about.html.

[10] *Id.*

[11] On Latinos and Hispanics identifying as a cohesive group with specific political priorities, opinions, and behaviors, see Rodolfo Espino, et al., *Latino Politics: Identity, Mobilization, and Representation* (Charlottesville: University of Virginia Press, 2007), Luis Ricardo Fraga, *Latinos in the New Millennium: An Almanac of Opinion, Behavior, and Policy Preferences* (New York: Cambridge University Press, 2012), John A. García, *Latino Politics in America: Community, Culture, and Interests* (Lanham: Rowman & Littlefield Publisher, 2012, 2021), F. Chris Garcia and Gabriel Sanchez, *Hispanics and the US Political System: Moving into the Mainstream* (Taylor and Francis, 2015), Armando Navarro, *Mexicano and Latino Politics and the Quest for Self-determination: What Needs*

Methodology

I employ the standard methodology used by historians to research the long history of racial discrimination and its effect on Latino political representation and participation in Washington State. My historical research and writing process is, in part, based on Busha and Harter's six-step formula: "(a) The recognition of a historical problem or the identification of a need for certain historical knowledge; (b) The gathering of as much relevant information about the problem or topic as possible; (c) If appropriate, the forming of hypotheses that tentatively explain relationships between historical factors; (d) The rigorous collection and organization of evidence, and the verification of the authenticity and veracity of information and its sources; (e) The selection, organization, and analysis of the most pertinent collected evidence, and the drawing of conclusions; (f) The recording of conclusions in a meaningful narrative."[12] The application of this method allows historians to work systematically to gather, authenticate, and analyze a wide range of sources to produce a historical account that is most accurate.

To write and interpret the history of Latino people in Washington, I analyzed both primary and secondary sources. Primary sources are created during the time period of study. For this report, I used the following primary documents: archival records, government documents, court records, newspapers, transcripts of legal records, demographic and socio-economic reports, and U.S. Census records. Secondary sources are interpretations of primary sources. In drawing conclusions for this study, I used the following secondary sources: scholarly books, dissertations, theses, peer-reviewed journal articles, newspaper editorial/opinion pieces, court case expert reports, and digital history projects, such as the *Seattle Civil Rights and Labor History Project*.

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to Be Done (Lanham: Lexington Books, 2015), and Lisa Garcia Bedolla, *Latino Politics* (Malden: Polity Press, 2015, 2021).

[12] Charles H. Busha and Stephen P. Harter, *Research Methods in Librarianship: Techniques and Interpretation* (New York: Academic Press, 1980), 91.

Shared History of Latinos in Central Washington

Latino residents in the state and the Yakima Valley and Pasco region have a common history of immigration to the state and shared experiences once they arrived. Starting in the late eighteenth century, Spanish-speaking people established settlements in Washington's Olympic Peninsula. From 1774 to 1797, Spanish ships explored the coastline of the Pacific Northwest. Historical records demonstrate that most of the sailors were of Mexican ancestry since the number of Spaniards living in colonial Mexico was minimal. On Washington's Neah Bay, in 1792, the first Spanish settlement was called Nuñez Gaona and its crew of mostly Mexican nationals were the state's earliest settlers.[13]

Fleeing the unrest created by the Mexican American War (1846-1848), Mexican nationals arrived in Washington and established businesses that contributed to the state's economic development. Decades before the American Civil War, Mexican mule packers and ranch hands contributed to transforming the Washington territory into a state, by providing the necessary goods and equipment to the forts and later burgeoning towns.[14] The expertise of Mexican mule packers was necessary to reach remote parts of the territory where freight wagons were not dependable or practical. Moreover, in the 1860s, Mexican nationals in the state were important entrepreneurs. For example, Rosario Romero relocated from Sonora, Mexico to Yakima, Washington. Romero has been "credited with starting the region's sheep-herding industry."[15] In the same period, the Galina family, also from Sonora, settled in Walla Walla,

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[13] On Spanish explorations, see: José Mariano Moziño and Iris Wilson Engstrand, *Noticias De Nutka: An Account of Nootka Sound in 1792* (Seattle: University of Washington Press, 1991), and Erasmo Gamboa, "Washington's Mexican Heritage: A View into Spanish Explorations, 1774-1797," *Columbia Magazine* (Fall 1989), 40-45.
[14] On Mexican mule packers in the Pacific Northwest, see Erasmo Gamboa, "Mexican Mule Packers and Oregon's Second Regiment Mounted Volunteers, 1855-1856," *Oregon Historical Quarterly* 92: 1 (1991): 41-59, and Erasmo Gamboa, "The Mexican Mule Pack System of Transportation in the Pacific Northwest and British Columbia," *Journal of the West* 29:1 (1990): 16-27.
[15] Vicki L. Ruiz and Virginia Sánchez Korrol, *Latinas in the United States*, (Bloomington: Indiana University Press, 2006), 25.

Washington. The family operated a mule-pack train that facilitated the transportation of goods to mining districts throughout the region.[16]

Between 1900 and 1930, Mexican nationals and Mexican Americans along with their families were drawn to Washington State to labor primarily in agriculture. A major force contributing to their movements was the growth of the U.S. agriculture industry and the Mexican Revolution (1910-1917), which contributed to a surplus of workers in the Southwest.[17] This forced people of Mexican descent to travel further north to find employment. Once the U.S. entered World War I, a labor shortage prompted growers in the Northwest to recruit ethnic Mexican workers. While the Immigration Act of 1917 required that Mexican people pass a literacy test and pay a head tax, it was waived for those who worked for the western sugar beet growers.[18] In 1924, the Johnson-Reed Act created, for the first time, numerical limits and quotas on immigration. However, the Western Hemisphere was exempt, which moved labor agencies to recruit Mexican nationals and Mexican Americans to Washington. The "immigration laws during the 1920s did not assign numerical quotas to Mexicans, but the enforcement provisions of restriction—notably visa requirements and border-control policies—profoundly affected Mexicans, making them the single largest group of illegal aliens by the late 1920s."[19] By the 1920s, Washington was an established migratory route for workers of Mexican descent.[20]

During the Great Depression, Washington's ethnic Mexican population, much like in the Southwest, was rounded up and forced to return to Mexico. The 1930s repatriation of Mexican

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[16] Korrol, *Latinas in the United States*, 25.
[17] Neil Foley, *Mexicans in the Making of America* (Harvard University Press, 2014), 43-48.
[18] Erasmo Gamboa, *Mexican Labor and World War II: Braceros in the Pacific Northwest, 1942-1947* (Seattle: University of Washington Press, 2000), 8.
[19] Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern American* (New Jersey: Princeton University Press, 2004), 7.
[20] Erasmo Gamboa, *Mexican Labor and World War II*, 9.

nationals and their U.S.-born children is estimated to have impacted about one million people.[21] In Spokane, Washington, city officials identified a group of Mexican nationals and had them deported.[22] The 1930 census recorded 562 persons of Mexican ancestry living in the state with 33 residing in Spokane County.[23] And at McNeil Federal Penitentiary, in 1932, about 90 Mexican nationals were sent to Mexico to reduce prison costs and likely as a consequence of racial discrimination and nativism.[24]

World War II (WWII) created conditions that brought a significant number of ethnic Mexican people to Washington State. As white migrant workers found employment in higher paying wartime industries, agricultural growers desperately needed workers. Beginning in 1942, a bilateral agreement between the U.S. and Mexico called the Bracero Program permitted Mexican nationals, also referred to as braceros (one who works using their arms), to enter the country as contract laborers. From 1943 to 1947, approximately 47,000 braceros came to the Pacific Northwest.[25] The number of braceros employed in Washington was around 15,000.[26] Unlike braceros living in the Southwest, braceros living in Northwestern communities experienced harsh racism, worked in freezing temperatures, and had their complaints ignored by U.S. and Mexican government officials. Braceros went on strike, and with the high cost of

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[21] On the approximate number of Mexican people repatriated, see Raymond Rodriguez and Francisco E. Balderrama, *Decade of Betrayal: Mexican Repatriation in the 1930s* (University of New Mexico Press, 2006), 151.
[22] Jerry Garcia, "History of Latinos in the Northwest," *Washington State Latino/Hispanic Assessment Report, 2009-2010*, Commission on Hispanic Affairs Website, 12, https://static1.squarespace.com/static/5915f65ed482e94b3f60b25f/t/5bef266df950b73a0a722bf5/1542399602953/2009-2010+CHA+Assessment+Report+-+English.pdf.
[23] U.S. Bureau of the Census, Department of Commerce, *Fifteenth Census of the United States: 1930: Population*, Vol. 3, Pt. 2: Montana-Wyoming (Washington D.C.: GPO, 1932), https://www2.census.gov/library/publications/decennial/1930/population-volume-3/10612982v3p2ch10.pdf, 1231.
[24] Jerry Garcia, "History of Latinos in the Northwest," 12.
[25] Erasmo Gamboa, "Braceros in the Pacific Northwest: Laborers on the Domestic Front, 1942-1947," *Pacific Northwest Historical Review* 53:3 (1987), 378.
[26] Erasmo Gamboa, "Mexican Migration into Washington State, 1940-1950," *Pacific Northwest Quarterly* 72:3 (1981), 124.

transporting workers to the state, growers decided to stop using braceros after the war ended in 1947.[27]

Bracero workers of Mexican ancestry experienced racial animosity in Washington State. In Stanwood, Washington, the local marshal and high school students tried to prevent braceros from congregating in town. The resulting altercation was so intense that it was referred to as a "near race riot."[28] The marshal declared, "We don't need these Mexicans here anyway, the town would be much better off with them."[29] In addition to threats of racial violence and exclusion, braceros in the Northwest were prohibited from entering businesses where signs read "No Japs or Mexicans Allowed" and some were attacked "without provocation."[30] In the Yakima Valley, Kara Kondo writes that after WWII, the Japanese were not welcomed and "'No Japs Wanted' signs appeared in almost every store and business establishment in Wapato."[31] This anti-Mexican and anti-Japanese sentiment was widespread in Washington.

In addition to agricultural workers, WWII brought Mexican American soldiers to Washington State. As Mexican Americans joined the armed forces in the Southwest, some were transferred to the area for training and later stationed at Fort Lewis (Tacoma, Washington), Fort Larsen (Moses Lake, Washington), Ephrata Air Terminal (Ephrata, Washington), Fairchild Air Force Base (near Spokane, Washington), and Hanford Nuclear Site (Hanford, Washington). For those who relocated and settled in urban centers such as Tacoma and Spokane, they helped to establish ethnic Mexican communities and worked in non-agricultural industries.[32]

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[27] Erasmo Gamboa, *Mexican Labor and World War* II, xx.
[28] *Id.* at 113.
[29] *Id.*
[30] Gamboa, *Mexican Labor and World War II*, 112.
[31] Kara Kondo, ed., *Profile: Yakima Valley Japanese Community, 1973* (Yakima Valley Japanese Community, 1974), 9. On the Japanese community in the Yakima Valley, see Thomas H. Heuterman, *The Burning Horse: Japanese-American Experience in the Yakima Valley, 1920-1942* (Cheney: Eastern Washington University, 1995).
[32] Carlos Maldonado, "Mexicanos in Spokane: 1930-1992," *Revista Apple* 3:1-2 (Spring 1992), 118-125.

Although ethnic Mexican labor was crucial to the state's economy, the white majority discriminated against Mexican laborers and racialized them as a separate and inferior race. During the construction of the Hanford Nuclear Site, the U.S. Army Corp of Engineers built off-site housing facilities in Pasco, Washington to segregate Mexican Americans from white workers.[33] The City of Pasco, located in Franklin County, became "darker and poorer than Kennewick and Richland" because of Washington's Jim Crow laws.[34] During the 1940s and 1950s, Jim Crow practices in the Tri-Cities area (Kennewick, Pasco, and Kennewick) forced people of color into the City of Pasco.[35] "White only" signs were also posted in Pasco and ethnic Mexican people who settled in other parts of the state recalled reading signs on storefronts that read, "No Mexicans Allowed."[36] Kennewick leaders established a curfew banning African Americans after dark (also referred to as Sundown towns) and, while Richland had no curfew, the high cost of homes made it practically impossible for people of color to purchase one in the city.[37] Additionally, due to racist attitudes and social pressures, selling a home in the Tri-cities area to non-white residents could have undesirable consequences. "Let me tell you, if anybody in this town sells property to a nigger, he's liable to be run out of town," stated a Kennewick sheriff.[38]

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[33] Bruce Hevly and John M Findlay, *Atomic Frontier Days: Hanford and the American West* (Seattle: University of Washington Press, 2011), 27.
[34] Kate Brown, *Plutopia: Nuclear Families, Atomic Cities, and the Great Soviet and American Plutonium Disasters* (United Kingdom: Oxford University Press, 2013), 154.
[35] Robert Bauman, "Jim Crow in the Tri-Cities, 1943-1950," *Pacific Northwest Quarterly* 96:3 (Summer 2005), 124-131.
[36] Josué Q. Estrada, "Tejano Diaspora into Washington State," (Master's Thesis, Washington State University, 2007), 113.
[37] Kate Brown, *Plutopia*, 151. On Sundown towns, see James W. Loewen, *Sundown Towns: A Hidden Dimension of American Racism* (New Press, 2006).
[38] Kate Brown, *Plutopia*, 154.

Prior to the Fair Housing Act of 1968, the use of racially restrictive covenants prohibited the sale or rental of real estate property to certain racial and religious groups.[39] In Washington State, racially restrict covenants were widespread throughout the state.[40] The covenants facilitated "patterns of residential racial segregation that long outlived these once technically legal devices."[41] The language of the covenants typically stated that "no person of any race other than the white race shall use or occupy…" said property.[42] In some cases, the covenants read that persons of Asian, Jewish, Turkish, or Black races could not occupy the residence unless they were acting as a "domestic servant."[43] Racially restrictive covenants were pervasive in Western Washington, and, currently, researchers from Eastern Washington University are examining "the records in 20 Washington counties on the east side of the mountains" to uncover the extent to which they were used in Eastern Washington.[44] Preliminary findings indicate that racially restrictive covenants were also "pretty widespread" in Eastern Washington including in places like "Pullman, Wenatchee, and Ritzville."[45]

After Washington growers decided to no longer import braceros after WWII, they recruited ethnic Mexican people including undocumented workers from the Southwest, who

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[39] Fair Housing Act, Public Law No. 90-284, 82 Stat. 81 (1968).
[40] Rajeev Majumdar, "Racially Restrictive Covenants in the State of Washington: A Primer for Practitioners," 30 *Seattle University Law Review* 1095 (2007), https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1917&context=sulr.
[41] Richard R. W. Brooks, *Saving the Neighborhood: Racially Restrictive Covenants, Law, and Social Norms* (Harvard University Press, 2013), 2.
[42] "Racial Restrictive Covenants Project-Washington State," *Civil Rights and Labor History Consortium*, University of Washington, http://depts.washington.edu/covenants/about.shtml.
[43] *Id.*
[44] Feliks Banel, "Project Aims to daylight 'restrictive covenants' on real estate in all Washington counties," *KIRO News Radio* (2021), https://mynorthwest.com/3273345/project-daylight-restrictive-covenants-real-estate-washington/. In 2021, the Washington State Legislature passed House Bill 1335 that provides funding for the University of Washington and Eastern Washington University to "review existing deeds and covenants for unlawful or other discriminatory restrictions, and provides property buyers a method to remove them. "House Bill Report, E2SHB 1335," Washington State Legislature, https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bill%20Reports/House/1335-S2.E%20HBR%20PL%2021.pdf?q=20220722221007.
[45] Feliks Banel, "Project Aims to daylight 'restrictive covenants' on real estate in all Washington counties."

were supposedly more controllable and docile than Mexican contract laborers. Beginning in the 1950s, ethnic Mexicans and their families began to permanently settle in mostly rural communities in Washington, abandoning the migratory lifestyle. The expansion of irrigation projects in Eastern and Central Washington provided for year-round work, contributing to the formation of communities in Adams, Benton, Franklin, Grant, and Yakima County.[46]

While Mexican undocumented workers in Washington were thousands of miles away from the U.S.-Mexico border, they were still arrested and deported back to Mexico. From 1953 to 1954, the U.S. government conducted a large-scale paramilitary campaign to deport undocumented workers that went by the derogatory name of "Operation Wetback."[47] Washington's agricultural growers desperately needed workers, so they hired undocumented persons and faced no legal penalties, but the workers themselves were not insulated from the deportation campaign. The military operation concentrated its efforts in California and Texas, but it was expanded to states such as Washington.[48] In total, "Operation Wetback" expelled more than 3.8 million Mexican nationals. The deportation campaign targeted all people of Mexican descent and scripted the whole community as "illegal aliens," deepening white people's mistrust and alienation towards ethnic Mexicans in the state.

Inspired by the civil rights struggle, Latinos organized a movement of their own to attempt to topple a wide range of barriers, including those that stifled Latino political participation and farm worker rights. Toward the close of the 1960s, Latinos in Washington,

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[46] Gina Bloodworth and James White, "The Columbia Basin Project: Seventy-Five Years Later," *Yearbook of the Association of Pacific Coast Geographers* 70 (2008): 96–111, and Kelsey Doncaster, "Columbia Basin Project," HistoryLink.org, https://www.historylink.org/file/21312.

[47] On Operation Wetback see, Juan Ramon Garcia, *Operation Wetback: The Mass Deportation of Mexican Undocumented Workers in 1954* (United Kingdom: Greenwood Press, 1980).

[48] Joan W. Moore and Harry Pachon, *Hispanics in the United States* (Englewood Cliffs, N.J.: Prentice-Hall, 1985), 140. Also, see Sylvia Cavazos, *The Disposable Mexican: Operation Wetback 1954, the Deportation of Undocumented Workers in California and Texas* (University of Texas--Pan American, 1997).

mostly of Mexican ancestry, were about two percent of the state's population. In 1967, the Mexican American Federation (MAF) was created because white residents and elected officials refused to take on their issues. Samuel Martinez of Yakima was named president and Antonio Daniel of Pasco was elected as a regional president.[49] Martinez and Daniel led the MAF, which was a state-wide organization with a presence in Yakima County but also the Puget Sound, Moses Lake, Tri-Cities, and Bellingham-Lynden areas.[50] The MAF wanted to encourage Mexican Americans to vote, run for elected office, and take a stand on political issues to influence local and state governments. The MAF also wanted to "dispel forever the apathy of the Mexican-American voters of Washington and of the nation."[51] In the same year, the United Farm Workers Cooperative (a precursor to the United Farm Workers Union) emerged to push for farm worker rights. During the 1970s, the union began mobilizing workers in Yakima County to demand higher wages, better treatment, and improved working conditions, but in response the growers brandished weapons, threatened union leaders, refused to hire those who participated in union activities, and filed litigation against the union for purportedly harassing workers.[52] White growers racialized Mexican laborers as inferior, uneducated, and replaceable, and therefore deserving of low wages and poor treatment.[53] The anti-union strategies used by the white

[49] "Daniel to Head Federation," *Tri-City Herald* (Pasco, Kennewick, and Richland, WA), November 13, 1967.
[50] Mexican-American Federation Puget Sound Newsletter, 1968-1970. Box 7, Folder 11. Tomás Ybarra-Frausto Papers, Accession No. 4339-001, University of Washington Libraries, Seattle, Washington.
[51] Mexican-American Federation Puget Sound Newsletter, University of Washington Libraries, Seattle, Washington.
[52] Jesus Lemos, *A History of the Chicano Political Involvement and the Organizational Efforts of the United Farm Workers Union in the Yakima Valley, Washington*, Master's thesis, University of Washington, 1974, 65-90; Oscar Rosales Castañeda, "UFWOC Yakima Valley Hop Strikes," *Seattle Civil Rights and Labor History Project*, University of Washington, https://depts.washington.edu/civilr/farmwk_ch7.htm; and Dixie Koenig, "Growers Defendants: Hops-labor Trail under Way," *Yakima Herald-Republic* (Yakima, WA), January 21, 1971.
[53] Like in the Southwest, the relationship between white growers and workers of Mexican descent produced a racial hierarchy, scripting the latter as non-white, cheap wage laborers. See Neil Foley, *The White Scourge: Mexicans, Blacks, and Poor Whites in Texas Cotton Culture* (University of California Press, 1998).

growers punished those who threatened the racial structure, and ensured that growers remained at the top of the racial hierarchy.

Despite efforts to stifle farm workers from organizing, the United Farm Workers Union (UFW) continued to support Washington's Latino workers. For example, the UFW has helped to secure labor contracts, file a lawsuit against Ruby Ridge Dairy (in Pasco, Washington), and advocate for comprehensive immigration reform.[54] In 1995, the UFW unionized workers at the Chateau Saint Michelle Winery in the Yakima Valley, and the winery remains under a UFW contract.[55] In 2009, four former employees of Ruby Ridge Dairy and the UFW sued the owners for not providing drinkable water, meal breaks, and for threatening to fire them for trying to unionize.[56] In 2022, the UFW and about 50 of its members organized a "Day Without Immigrants" rally in Pasco, calling for a "…fix [for] America's immigration system."[57]

Due to persistent organizing in the 1970s, ethnic Mexicans in Washington started to be recognized as an important constituency, and Latino people created institutions that were vital to community building. In 1971, Governor Daniel Evans formed the Commission on Mexican American Affairs and appointed eleven individuals to serve on the commission.[58] The commissioners were from across the state and charged with making policy recommendations that

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[54] For more information on Washington's United Farm Workers Union, see "Farm workers in Central Washington found the United Farmworkers of Washington State on September 21, 1986," HistoryLink.org, https://www.historylink.org/file/8302.

[55] Pascal Zachary, "Winery Field Workers Break New Ground in Union Election," *The Wall Street Journal*, June 7, 1995; "UFW Labels," United Farm Workers, https://ufw.org/organizing/ufw-labels/.

[56] Pratik Joshi, "Ministry gives checks to fired Pasco dairy workers," *Tri-City Herald* (Pasco, Kennewick, and Richland, WA), September 17, 2009, https://www.tri-cityherald.com/news/business/article31755897.html. In 2019, the UFW and dairy owners "agreed to walk away from the legal battle." Mathew Weaver, "After 10 years, dairy, UFW settle lawsuit," *Capital Press*, May 8, 2019, https://www.capitalpress.com/ag_sectors/dairy/after-10-years-dairy-ufw-settle-lawsuit/article_5ca4bda2-71b0-11e9-9a93-5bf9a8dcd558.html.

[57] Cameron Probert, "'Yes we can.' Tri-Cities immigrants call for reform during rally," *Tri-City Herald* (Pasco, Kennewick, and Richland, WA), February 2022, 2022, https://www.tri-cityherald.com/news/local/article258397168.html.

[58] The commission was renamed to be the Washington State Commission on Hispanic Affairs. "*About Us*," The Washington State Commission on Hispanic Affairs, https://www.cha.wa.gov/our-mission.

would benefit ethnic Mexicans. In 1972, El Centro de La Raza was founded to serve the needs of Seattle's Latino population.[59] And in 1979, Radio Cadena (also known as Radio KDNA) and the Sea Mar Community Health Center (Sea-Mar) were formed as community-based organizations. In the Yakima Valley, Radio Cadena provided Spanish-language programming that became "a tool for community building, advocacy, and entertainment that was especially leveraged by the women who lead it," writes historian Monica De La Torre.[60] Sea-Mar was opened to deliver health services to Seattle's low-income Latino, Asian, and Black population. To provide healthcare to farm workers in the Yakima Valley, labor activist Tomás Villanueva helped to establish the Yakima Valley Farm Workers Clinic in 1978.[61] The clinic is the "largest community health care provider in the northwest, operating clinics in Washington and Oregon," including the Miramar Health Centers that serve Pasco, Kennewick, and Richland residents.[62] The establishment of the Commission on Mexican American Affairs and community-based organizations was in response to Washington's Chicano Movement that demanded greater political, social, and economic equality.

During the 1980s and 1990s, the ethnic Mexican and Latino population in Washington State significantly increased, and the total number of Latinos doubled every decade after 1970 (see Table 1).

Table 1. Latino Population in Washington, 1970-1990[63]

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[59] "History and Evolution," El Centro de la Raza, https://www.elcentrodelaraza.org/history-evolution/.
[60] Monica De La Torre, *Feminista Frequencies: Community Building Through Radio in the Yakima Valley* (University of Washington Press, 2022), 4.
[61] Carlos S. Maldonado and Gilberto García, *The Chicano Experience in the Northwest* (Kendall/Hunt Publishing Company, 1995), 102. On Villanueva's contribution to founding the Yakima Valley Farm Workers Clinic see, "Tomás Villanueva: Founder, United Farmworkers of Washington State," *Seattle Civil Rights and Labor History Project*, University of Washington, https://depts.washington.edu/civilr/villanueva.htm.
[62] Annette Clay, "Nonprofit opens new Tri-Cities medical and dental clinic. No insurance needed," *Tri-City Herald* (Pasco, Kennewick, and Richland, WA), May 10, 2021, https://www.tri-cityherald.com/news/local/article251221114.html.
[63] "Washington Data and Research," Washington's Office of Financial Management Website, https://ofm.wa.gov/washington-data-research/statewide-data/washington-trends/population-changes/population-hispaniclatino-origin. For 1970, the Latino population is based on "Spanish language." See Cambell Gibson and Kay

	1970	1980	1990
Total Population	70,734	120,016	214,570
% of State Population	2.1%	2.9%	4.4%

Racial discrimination against Washington's Latino farmworkers has persisted. In 2013, workers would go on strike against Sakuma Brothers Farms in Burlington, Washington.[64] Many of these farm workers who identified as Mexican and Indigenous people of Mexico reported that supervisors regularly used racist slurs and treated them as subhuman.[65] When workers complained about harassment and demanded a higher piece rate wage for picking berries, they were fired. Latino farm workers, like in the past, had no choice but to use collective organizing and the courts to fight for labor rights and against racism. Workers went on strike and filed lawsuits against the growers, leading to "multiple victories over issues of workers' rights, housing and hiring practices; [and]…[winning] hundreds of dollars in back wages…".[66]

Therefore, Latinos in Washington, and in particular in the Yakima Valley and Pasco region, have not just a common history of immigration and discrimination, but also the common present-day experience of continuing to combat that discrimination.

Senate Factor 1: History of Official Voting-Related Discrimination

According to the Senate Report, Senate Factor 1 requires an analysis of "the extent of any history of official discrimination in the state or political subdivision that touched on the right of

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Jung, "Historical Census Statistics on Population Totals by Race, 1790 to 1990, and Hispanic Origin, 1970 to 1990, For the United States, Regions, Divisions, States," U.S. Census Bureau, Washington D.C. (September 2002), https://www.census.gov/content/dam/Census/library/working-papers/2002/demo/POP-twps0056.pdf.

[64] David Bacon, "Why These Farm Workers Went on Strike—and Why it Matters," *The Nation*, October 3, 2016, https://www.thenation.com/article/archive/why-these-farm-workers-went-on-strike-and-why-it-matters/.

[65] Ian Alexander, "The Struggle for Fairness at Sakuma Brothers," *Fair Work* 10 (2015), https://fairworldproject.org/the-struggle-for-fairness-at-sakuma-brothers/.

[66] *Id.*

the members of the minority group…to participate in the democratic process."[67] The State of Washington has a long history of discrimination against Latinos in the voting arena, both statewide and in the Yakima Valley and Pasco region.

A. English Literacy Tests

A combination of national, state, and local forces led to the denial of Latino voters' ability to exercise their voting rights before 1970. During this period, Latinos' participation in Washington elections was primarily blocked by the state's official literacy test, which required that voters speak and read English. Although the language exam would be suspended in the South under the Voting Rights Act (VRA) of 1965, literacy tests continued to be enforced in states like Washington past this date. When the VRA was extended in 1970, the English language requirement to vote was banned in Washington and throughout the country.

i. The Adoption of Washington's English Literacy Test

Literacy tests were first established as an effective means to deny the franchise to marginalized groups during the early 1850s when the Know-Nothing Party mobilized them to suppress the voting rights of Irish immigrants in the Northeast.[68] In Connecticut and Massachusetts, English literacy tests were adopted to purportedly encourage immigrants to learn English and assimilate, but lawmakers understood that it would have the effect of disenfranchising Irish voters.[69] According to the Know-Nothing Party, the language exams "would keep the 'ignorant, imbrute Irish' from the polls."[70] Once literacy tests were passed, they effectively narrowed the franchise for Irish immigrants.

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[67] S. Rep. No. 97-417, at 28 (1982); *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986).
[68] Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000, 82-84.
[69] *Id.* at 86.
[70] *Id.*

After the Fifteenth Amendment was passed in 1870, requiring that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude," English literacy tests were an effective tool utilized by southern states to keep African Americans from the ballot box while not explicitly disenfranchising voters on account of race.[71]

In 1896, following the example set by northeastern and southern states and on the heels of intense racial violence against Chinese nationals, Washington passed legislation requiring English language knowledge to register to vote.[72] The legislation included a grandfather clause that exempted those already registered to vote.[73] The language exam would go on to be used to disenfranchise non-English speaking immigrants, Asians, Native Americans, illiterate whites, and Mexican Americans.[74]

ii. The Impact of Washington's Literacy Test on Latino Voters

Beginning in at least the 1950s, literacy tests in Washington State and, in particular, in the Yakima Valley, were administered inconsistently and sporadically, but in a racially discriminatory manner to suppress Latino votes. Prior to 1970, Latino voter registration data in Washington is lacking because the U.S. Census did not enumerate Latinos as a single group, but

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[71] *U.S. Constitution*, Amendment 15, Section 1. On the state statues and constitutional amendments related to literacy tests, see "Appendix: State Suffrage Laws," Table A. 13 in Alexander Keyssar, *The Right to Vote*, 325-402.
[72] *House Journal of the State of Washington* (Olympia, Washington, 1895), 297, and Chapter XXXVII [House Bill No. 57]. Amendment to the Constitution, Qualification of Voters. *Session Laws of the State of Washington* (Olympia, Washington: Published by authority, 1890), 60.
[73] *Id.*
[74] Before Washington's literacy test was passed in 1896, the state's legislature attempted to pass a proposal "that no native of China…shall ever exercise the privileges of an elector of this state." See Beverly P. Rosenow and Quentin S. Smith, *The Journal of the Washington State Constitutional Convention, 1889* (Seattle: Book Pub. Co, 1962), 61. On Washington's state literacy test and Latinos, see James Thomas Tucker, *The Battle Over Bilingual Ballots: Language Minorities and Political Access Under the Voting Rights Act* (United Kingdom: Taylor & Francis, 2016), 23-24. On the impact of the state's language requirement on Native Americans, see Hilda Bryant, "New Voters May Change Yakima Area," *Seattle Post-Intelligencer* (Seattle, WA), August 21, 1970.

there is other evidence from the time that demonstrates the impact of the literacy tests on Latino voters.

For example, Rodolfo Alaniz of Yakima County stated in a 1968 sworn and signed affidavit that he had been administered a literacy test on several occasions. Mr. Alaniz was one of thirteen individuals who submitted sworn testimony for a court case led by Mexican Americans in the Yakima Valley, with legal support from the American Civil Liberties Union (ACLU), opposing the state's literacy test (see *Mexican-American Federation v. Eugene Naff, Yakima County Auditor et al.*, 299 F. Supp. 597 (E.D. Wash. 1969)). Alaniz recalled that,

> [A]round 1954, I attempted to register to vote in Sunnyside, Washington but my application was refused because I couldn't satisfy the registrar that I could read and speak the English language. In 1957, I took and passed the Washington Driver's License test; the examiner read the questions to me and I answered the questions in English. In 1960, when John F. Kennedy was running for president, I again tried to register to vote and this time was told that I had to know how to write English, and was not allowed to register to vote. On or about, the middle of July 1969, I again attempted to be registered to vote and was registered by the Sunnyside City Clerk's Office.[75]

Alaniz's testimony reveals much about the administration of the state's literacy tests. First, Latino people were disenfranchised by the state's English language requirement to vote as early as the 1950s. For Mexican Americans in Washington, the inability to read and speak the English language stemmed largely from attending segregated schools in the Southwest, which were inferior to white schools.[76] Even by 1970, almost 65 percent of Chicanos residing in the Northwest migrated from the Southwest.[77] Second, city clerks and deputy registrars had the

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[75] "Affidavit of Rodolfo Alaniz," August 16, 1968, American Civil Liberties Union (ACLU) of Washington 1942-1996. Accession No. 1177-005. Special Collections, University of Washington Libraries, Seattle, WA.

[76] For instance, Antonia Castañeda writes that her family regularly migrated from Texas to Washington. In Texas, Castañeda and many other migrant families attended segregated schools that were inferior to their white counterparts. See Antonia I. Casteñeda, "'Que Se Pudieran Defender (So You can Defend Yourselves)': Chicanas, Regional History, and National Discourses," *Frontiers: A Journal of Women Studies*, 2001, 22:3 (2001), 116-1142. On the history of Chicano students and segregation, see Gilbert G. Gonzalez, *Chicano Education in the Era of Segregation* (UNT Press, 2013).

[77] See Ricard W. Slatta, "Chicanos in the Pacific Northwest: A Demographic and Socioeconomic Portrait," *Pacific Northwest Quarterly* 70:4 (1979), 157.

power to determine if a person had adequately satisfied the language test. According to a 1933 state voting law, these officials could "interrogate" prospective voters to demonstrate whether they could "read and speak English," and if they were "not satisfied in that regard, he may require the applicant to read aloud and explain the meaning of some ordinary English prose."[78] Affidavits and deposition statements clearly confirm that registrars used their tremendous latitude to enforce these exams more regularly and more stringently for Mexican American people, especially when English was not their dominant language.[79] Third, while English literacy tests targeted Latinos, sometimes they were allowed to register without incident, demonstrating the arbitrariness and inconsistency of the test's administration.[80] And lastly, registrars at times said that people needed to read and *write* to register to vote, but the state law only required people to read and *speak* English.[81] Ultimately, a panel of three judges ruled against the Plaintiffs and MAF. The judges collectively agreed that "A simple inquiry by the registrar of the applicant in this form, 'Can you speak and read English?' is not a test and could not conceivably result in discriminatory practices."[82] Despite the fact that that the literacy test was being administered inconsistently, targeted Latinos, and that election officials had asked a Latino applicant to "read

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[78] "Laws of Washington Passed at the Twenty-Third Regular Session, 1933," Washington State Legislature, https://leg.wa.gov/CodeReviser/documents/sessionlaw/1933c1.pdf.

[79] See affidavits for *Mexican American Federation v. Eugene Naff, Yakima County Auditor et al.*, Box 3, American Civil Liberties Union (ACLU) of Washington 1942-1996. Accession No. 1177-005. Special Collections, University of Washington Libraries, Seattle, WA.

[80] "Affidavit of Rodolfo Alaniz," August 16, 1968, American Civil Liberties Union (ACLU) of Washington 1942-1996. Accession No. 1177-005. Special Collections, University of Washington Libraries, Seattle, WA. In a sworn affidavit by John Velez, he states that he was "promptly registered without being required to read anything out loud to the registrar or asked if [he] could read or speak the English language." However, Felipa R. Cantu's affidavit states that she was "immediately" asked by the clerk, "[d]o you know how to read and speak English." See "Affidavit of John Velez," August 19, 1968, American Civil Liberties Union (ACLU) of Washington 1942-1996. Accession No. 1177-005. Special Collections, University of Washington Libraries, Seattle, WA, and "Affidavit of Felipa R. Cantu, August 19, 1968, American Civil Liberties Union (ACLU) of Washington 1942-1996. Accession No. 1177-005. Special Collections, University of Washington Libraries, Seattle, WA.

[81] Constitution of the State of Washington, Article VI, as amended by 2, Section 1 (1896), 59, https://leg.wa.gov/CodeReviser/Documents/WAConstitution.pdf.

[82] Opinion of the Court, *Mexican-American Federation v. Eugene Naff, Yakima County Auditor et al.*, U.S. District Courts, Eastern District of Washington, Yakima, Civ. Ac. No. 2457, 299 F. Supp. 587 (1969), 592-593.

the names of the list of candidates," among other evidence, the court ruled the registration process had no "discriminatory overtones."[83]

The disenfranchisement of the Mexican American electorate in Washington and Yakima County received little attention. The U.S. Commission on Civil Rights, an agency created in 1957 and charged with investigating allegations of voter suppression based on race, placed its emphasis on the African American electorate residing in the South.[84] Since the commission received no "evidence of racial discrimination in voting in any of the other 37 States," this meant that Washington's literacy test was not contested when the Commission released their report in 1961.[85]

The U.S. Commission on Civil Rights was instrumental in pressuring Congress to pass the VRA of 1965. It was one of the most significant pieces of civil rights legislation with far-reaching power that transformed the nation's political system. The law suspended literacy tests in primarily six southern states, authorized the appointment of federal voting examiners to replace noncompliant registrars, deployed federal observers to monitor all elections, allowed the U.S. Attorney General to file suit against states that administered the poll tax, and required covered areas to submit electoral changes to the federal government to determine that they would not have a discriminatory effect.[86]

For African Americans in the South, the VRA of 1965 immediately increased their number of registered voters. With no literacy tests or other restrictive devices, historian Alexander Keyssar explains that the registration of African Americans in Mississippi "went from less than 10 percent in 1964 to almost 60 percent in 1968; in Alabama, the figure rose from 24 percent to 57."[87] In the

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[83] *Id.*
[84] *Commission on Civil Rights Report*, 1961, United States Commission on Civil Rights (Washington: U.S. Govt., 1961) 21.
[85] *Id.*
[86] Voting Rights Act, Public Law 89-110, 89th Congress, S. 1564, August 6, 1965.
[87] Keyssar, *The Right to* Vote, 212.

South, the overall registration of African Americans reached a high mark of 62 percent.[88] The VRA was not a panacea, especially for Washington's Latino voters.

In Washington, the VRA had no effect on the administration of literacy tests, and literacy tests continued to be used to disenfranchise Mexican American citizens. In 1966, Washington's Secretary of State, A. Ludlow Kramer, asked the Attorney General of Washington, John J. O'Connell, about the impact of the VRA on the state's English literacy tests, and in particular, Section 4(e).[89] This section read that no person who had completed a sixth grade education "in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local elections because of his inability to read, write, understand, or interpret any matter the English language."[90] In other words, American citizens with limited English skills, such as Puerto Rican people, were exempt from English literacy tests. O'Connell replied that Section 4(e) had a "limited area" and the state laws needed to be revised to read, "[Electors] shall be able to read and speak the English language *unless* they can demonstrate that they have successfully completed a sixth grade primary education…in which the predominate language was other than English."[91] O'Connell argued that the state did not need to ban the test, but only amend the law.

The Washington State Board Against Discrimination, however, was concerned that the state's English literacy test was in violation of the VRA. On June 15, 1967, O'Connell responded, "Except for persons who come within the Puerto Rico provision, the Washington

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[88] *Id.*
[89] Letter from John J. O'Connell to A. Ludlow Kramer, September 20, 1966, Box 3, Folder "MAF v. Naff," American Civil Liberties Union (ACLU) of Washington 1942-1996. Accession No. 1177-005. Special Collections, University of Washington Libraries, Seattle, WA.
[90] Voting Rights Act, Section 4(e), Public Law 89-110, 89th Congress, S. 1564, August 6, 1965.
[91] Letter from John J. O'Connell to A. Ludlow Kramer.

State literacy requirement remains in effect. However, the manner of testing for literacy is now controlled by federal law, as will be hereinafter."[92] O'Connell wrote that literacy tests in the State of Washington had not "been prohibited outright by federal legislation" and made a case that if the state had a test, it was appropriate. English literacy exams, O'Connell insisted, had been suspended in states where fewer than 50 percent of the voting age residents were registered, which did not include Washington State. Therefore, he argued that the test could still be enforced. And federal standards required that everyone be given a test in writing. In Washington, O'Connell insisted that not all persons were tested but only in cases where "the registration officer 'is not satisfied' with the applicant's sworn statement" and of a person's ability to read and speak English.[93]

Washington's Attorney General also cited *Louisiana v. United States* (1965) in his effort to defend the state's language requirement.[94] While the State of Louisiana had adopted a literacy test to "purposely disenfranchise Negroes, it being understood that the registration officers would use their discretion for that purpose," O'Connell declared that Washington had no "tradition of discrimination against minorities in voting" and would prohibit literacy tests in accordance with the new Federal law.[95] But he maintained that Washington did not have a literacy test, rather it had a literacy "requirement."

By emphasizing that literacy was a requirement versus a test, claiming that Washington's test was non-discriminatory, and proclaiming that Washington was unlike the South, O'Connell's opinion cleared the way for local officials and registrars to continue to use the test to suppress the Mexican American vote. And in Eastern Washington, a place with a growing

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[92] Washington Attorney General's Office, John. J. O'Connell, *Opinions* (1957-1968), No. 21 (June 15, 1967).
[93] *Id.*
[94] *Louisiana v. United States*, 380 U.S. 145 (1965).
[95] Washington Attorney General's Office, John. J. O'Connell, *Opinions* (1957-1968), No. 21 (June 15, 1967).

ethnic Mexican population, the English literacy test would be used almost exclusively to disenfranchise the Latino community.[96]

iii. Advocacy by Yakima County Latinos for an End to Literacy Tests

During the late 1960s, when the Mexican-American Federation (MAF) started to encourage their community throughout the state to register to vote, they witnessed that the literacy test was being administered more regularly and more carefully to Mexican Americans.[97] Because the degree that a person's ability to "read and speak English" was up to the registrars, MAF leaders, Samuel Martinez and Ricardo Garcia, believed that Eugene Naff, Yakima County Auditor, should appoint Spanish-speaking deputy registrars to assist prospective voters with limited English skills.[98] In Yakima County's rural precincts, Naff had appointed 35 white deputy registrars even though Mexican Americans numbered around 12,000.[99]

The MAF provided names of potential people Naff could appoint but he refused to do so. Naff told Martinez and Garcia that it was ridiculous to appoint "Mexican registrars…if this was the case we probably should have Negro, Indian, Filipino, and Japanese registrars if we were to go by ethnic group."[100] Naff acknowledged that he was aware of the 1965 VRA but stated, "I still don't see, however, how anyone who can't read English can figure out how to vote on a

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[96] See affidavits for *Mexican-American Federation v. Eugene Naff, Yakima County Auditor et al.*, Box 3, American Civil Liberties Union (ACLU) of Washington 1942-1996. Accession No. 1177-005. Special Collections, University of Washington Libraries, Seattle, Washington.
[97] "Mexican-Americans Seek Spanish-Speaking Registrars," *Yakima Herald-Republic* (Yakima, WA), March 8, 1968.
[98] "Spanish-Speaking Elections Registrars? No, Says Naff," *Yakima Herald-Republic* (Yakima, WA), March 16, 1968.
[99] Complaint for Declaratory and Injunctive Relief, *Mexican-American Federation v. Eugene Naff, Yakima County Auditor et al.*, September 11, 1968, Records of the United States District Courts, Eastern District of Washington, Yakima, Box 361, Civil Case Files, 1967-1970, National Archives, Seattle, Washington.
[100] "Mexican-Americans Seek Spanish-Speaking Registrars," *Yakima Herald-Republic* (Yakima, WA), March 8, 1968.

ballot…I believe it is privilege to register to vote."[101] He told the MAF leaders that they should help register voters, but their assistance would later be prohibited.[102]

After the first meeting with Naff, the situation intensified as deputy registrars began to administer literacy tests exclusively to Mexican Americans in Yakima County.[103] As a result, on September 11, 1968, four Mexican Americans, the MAF, and the United Farm Workers Co-op, with legal support provided by ACLU, filed a class action lawsuit against the county claiming that Washington's literacy tests violated the VRA of 1965.[104]

The Plaintiffs in their deposition statements and responses to the defendants' interrogatories vociferously expressed that they were citizens deserving an equal opportunity to exercise the franchise. For example, Simon Ramos, a resident of Toppenish, Washington, since 1946 stated, "I am a citizen and I have the right to vote. The first time I try to act like a citizen, they throw me back. I don't feel too good."[105] Expressing a similar feeling was Jennie Marin, a resident of Toppenish since 1957, who said, "I feel bad about not being able to vote. Not quite a citizen. Maybe even cheated a little. I have a son who served four years in the Navy and I'm proud of him. I feel I have a right to be a full citizen."[106]

Despite these individuals' appeals to be permitted to exercise their right to vote in Yakima County and the ACLU's argument of targeted racial discrimination against Mexican

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[101] "Spanish-Speaking Elections Registrars? No, Says Naff," *Yakima Herald-Republic* (Yakima, WA), March 16, 1968.
[102] *Id.*
[103] *Id.*
[104] *Mexican-American Federation v. Eugene Naff, Yakima County Auditor et al.*, U.S. District Courts, Eastern District of Washington, Yakima, Civil Case Files 1967-1970, 2454-2457, Box 361, National Archives and Records Administration, Seattle, WA.
[105] Plaintiffs Simon Ramos' Answers to Defendants Interrogatories, *Mexican-American Federation v. Eugene Naff, Yakima County Auditor et al.*, January 31, 1969, Records of the United States District Courts, Eastern District of Washington, Yakima, Box 361, Civil Case Files, 1967-1970, National Archives, Seattle, Washington.
[106] Deposition Statement for Jennie Marin, *Mexican-American Federation v. Eugene Naff, Yakima County Auditor et al.*, April 1, 1969, Records of the United States District Courts, Eastern District of Washington, Yakima, Box 361, Civil Case Files, 1967-1970, National Archives, Seattle, Washington.

American voters, on May 2, 1969, a panel of three judges ruled against the Plaintiffs and MAF.[107] Although the *Mexican-American Federation v. Eugene Naff, Yakima County Auditor et al.* (1968) case did not officially end literacy tests in Washington, the MAF's activism was crucial to their eventual elimination. The organization called attention to the language and racial barriers confronted by Mexican Americans in Yakima County. When the VRA was extended in 1970, the English language requirement to vote was banned in Washington and throughout the country.

B. At-Large Elections

In addition to the above, the state's at-large elections systems continued to suppress Mexican Americans' ability to fully exercise their right to vote. Political scientist Luis R. Fraga found that at-large elections "characterized by substantial ethnic and racial vote polarization and differences for first-choice candidates…severely limited the effective exercise of political influence by minority communities."[108] At-large elections in Washington's Yakima Valley and Pasco areas have historically and through the present day limited the effective exercise of political influence of the Latino community.

i. Origins of At-Large Elections & Adoption in the Yakima Valley and Pasco Areas

At-large election systems are a method proven to dilute the voting strength of minority voters.[109] By the mid-1960s, at least 20 Washington cities had adopted the council-manager form

[107] Opinion of the Court, *Mexican-American Federation v. Eugene Naff, Yakima County Auditor et al.*, U.S. District Courts, Eastern District of Washington, Yakima, Civ. Ac. No. 2457, 299 F. Supp. 587 (1969).
[108] Luis Ricardo Fraga, "Domination Through Democratic Means: Nonpartisan Slating Groups in City Electoral Politics," *Urban Affairs Quarterly* 23:4 (1988), 544.
[109] Edward C. Banfield and James Q. Wilson, *City Politics* (Harvard University Press, 1966); Chandler Davidson and George Korbel, "At-Large Elections and Minority-Group Representation: A Re-Examination of the Historical and Contemporary Evidence," *The Journal of Politics* 43:4 (November 1981), 982-1005; and Chandler Davidson and Bernard Grofman, eds., *Quiet Revolution in the South: The Impact of Voting Rights, 1965-1990* (Princeton University Press, 1994).

of government including the City of Yakima (1957) and City of Pasco (1964).[110] In both of these cities, seven council members would be elected using at-large elections and the council would elect a mayor from the group.[111] In 1976, voters in the City of Yakima passed a resolution that created four council posts elected from residency districts in the primary and three council posts elected at-large.[112] In actuality, all of the council posts were elected at-large in the general election. According to the U.S. Census, in 1970, the city's "Spanish origin" population was about 2 percent, and by 1980, it was 6.42 percent.[113] The approved resolution by the city's voters stated that:

> Candidates for 'district positions' shall file their candidacy for nomination by the electors of the district wherein each candidate, respectively, resides. At the primary election, each qualified voter of each district may cast only one vote for a candidate. The names of the two candidates for each district for whom the largest number of votes are cast at the primary election shall appear on the citywide general election ballot, and **one candidate from each district receives the highest number of votes, as cast by the citywide electorate at the general election**, shall thereby be declared as duly elected to represent 'district position' as a member of the City Council.[114]

Pasco adopted a similar hybrid election system. In May of 1978, the Pasco City Council passed an ordinance that modified its previous format that had five voting districts and two at-large

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[110] "Cities Use Council-Manager," *Tri-Cities Herald* (Pasco, Kennewick, and Richland, WA), May 3, 1964, and "Council to be Elected: City Manager OK'd In Pasco by 2-1 Vote," *Tri-Cities Herald* (Pasco, Kennewick, and Richland, WA) May 6, 1964.
[111] *Id.*
[112] Resolution No. D 3585, City of Yakima, September 13, 1976, https://www.digitalarchives.wa.gov/DigitalObject/Download/23e9049e-c8e8-4690-b802-d03cad9acfcb.
[113] Characteristics of the Population, Washington, Vol. 41, Part 49, Table 102, U.S. Census Bureau (U.S. Department of Commerce, 1973), 49.249, https://www.google.com/books/edition/1970_Census_of_Population/UkEYAAAAYAAJ?hl=en&gbpv=0, and General and Social Economic Characteristics, Washington, Vol. 1, Part 49, Table 59, U.S. Census Bureau ((U.S. Department of Commerce, 1983), 49.29, https://www.google.com/books/edition/1980_census_of_population/6DRrK0sak6wC?hl=en&gbpv=0.
[114] Resolution No. D 3585, City of Yakima, September 13, 1976, https://www.digitalarchives.wa.gov/DigitalObject/Download/23e9049e-c8e8-4690-b802-d03cad9acfcb.

positions.[115] In 1970, the City of Pasco's "Spanish origin" percent was 8.3 percent and a decade later it was 20.8 percent.[116] The city council voted to amend its election rules to read:

> The qualified electors of each voting district, and they only, shall nominate from among their number candidates from the office of councilman of such voting districts to be voted for at the following general election…In addition, two councilmen, designated councilmen at-large, shall be nominated in a similar manner….**Councilmen shall be elected by all of the qualified voters of the city** and the person receiving the highest number of votes for the office of the councilman for the position for which he is a candidate shall be declared duly elected.[117]

Therefore, "district" candidates for Pasco's city council, like in Yakima, would have to be elected in citywide races.

At-large elections have worked to systematically and persistently place Latino voters and candidates at a disadvantage in the Yakima Valley and Pasco areas. In the last decade, Latinos in the Yakima Valley and Pasco have continuously resorted to using the courts to bring an end to at-large systems of election.

ii. Montes v. City of Yakima (2014)

While the at-large system of election was in place in the largest city of Yakima County—Yakima, Washington—no Latino candidate was ever elected to the city council.[118] In 2012, Latinos in the City of Yakima argued that racial discrimination and the city's at-large election system prevented the Latino community (of nearly 40 percent) from electing a candidate who

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[115] "Ordinance No. 1955," May 1, 1978, Ordinances (1970-1979), City of Pasco.
[116] Characteristics of the Population, Washington, Vol. 41, Part 49, Table 102, U.S. Census Bureau (U.S. Department of Commerce, 1973), 49.248, https://www.google.com/books/edition/1970_Census_of_Population/UkEYAAAAYAAJ?hl=en&gbpv=0, and General and Social Economic Characteristics, Washington, Vol. 1, Part 49, Table 59, U.S. Census Bureau ((U.S. Department of Commerce, 1983), 49.33, https://www.google.com/books/edition/1980_census_of_population/6DRrK0sak6wC?hl=en&gbpv=0.
[117] *Id.*
[118] Nicholas K. Geranios, "Latinos win Yakima council seats for first time in city's history," *Seattle Times* (Seattle, WA), November 4, 2015, https://www.seattletimes.com/seattle-news/politics/in-wake-of-lawsuit-latinos-win-yakima-city-council-seats/.

best represented their interests.[119] From 2009 to 2011, three Latino candidates ran for the city's council and were defeated.[120] In all races, there was evidence of racial polarization—when white and Latino voters exhibit polar opposite candidate preferences in an election.[121] In addition, in 2011, Yakima residents voted against Proposition 1 that "would have changed the city charter to make all seven Yakima City Council seats be divided among districts."[122] Therefore, Latinos used the courts to resist the dilution of their vote. The court found a violation of Section 2 of the VRA at the summary judgment stage, and ultimately the remedial plan created a system of seven single-member voting districts, including one majority-Latino district and a second opportunity district.[123]

iii. Glatt v. City of Pasco (2017)

Likewise, the at-large system of election in Pasco was effective at preventing the Latino community from electing their candidates of choice. In 2016, Plaintiffs filed a complaint against Pasco challenging the City's at-large election scheme under Section 2 of the VRA.[124] While Latinos made up about 32 percent of the city's voting-age population, and approximately 56 percent of the city's total population, no Latino had "ever won a contested election to the Pasco

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[119] Venice Buhain, "Yakima set to elect first Latino city councilmember," *The Seattle Globalist*, May 29, 2015, https://seattleglobalist.com/2015/05/29/yakima-voting-rights-act/37312. For demographic data, see U.S. Census Bureau, *American Community Survey 2014-2018 5-Year Estimates* (2019), https://data.census.gov/cedsci/.

[120] "Yakima Valley Latinos getting a voice, with court's help," *Los Angeles Times* (Los Angeles, CA), September 25, 2014, https://www.latimes.com/nation/la-na-c1-yakima-latinos-elections-20140925-story.html.

[121] Luis Ricardo Fraga, "Expert Report Submitted on Behalf of Plaintiffs in Montes v. City of Yakima," *Rogelio Montes and Mateo Arteaga et al. v. City of Yakima et al.*, No. 12-CV-3108-TOR, United States District Court, E.D. Washington, 2014, 4.

[122] "ACLU threatens to sue Yakima after voters kills Prop. 1," *Yakima Herald-Republic* (Yakima, WA), August 18, 2011, https://www.yakimaherald.com/aclu-threatens-to-sue-yakima-after-voters-kill-prop-1/article_d2a516e4-ee99-11e4-8188-a3976a0a6afc.html.

[123] Plaintiffs' Motion for Summary Judgment, *Rogelio Montes and Mateo Arteaga et al. v. City of Yakima et al.*, No. 12-CV-3108-TOR, United States District Court, E.D. Washington, 2014, 7.

[124] Complaint for Declaratory and Injunctive Relief, *Bertha Arana Glatt et al. v. City of Pasco et al.*, No. 4:16-CV-05108, United States District Court, E.D. Washington, 2016.

City Council."[125] A single Latino had twice been elected to the council, but they ran unopposed.[126] It is important to note that the election of one minority candidate does not guarantee that the community is able to exercise meaningful political power, or that their representation is substantive.[127] Because of the evidence presented, Pasco city officials "admitted liability and consented to the court's finding that the City's existing at-large method of electing all its members to the Pasco City Council violated Section 2 of the VRA by diluting the electoral power of Pasco's Latino voters" and agreed "to file a consent decree with the federal court" to modify the City's election system.[128] In 2017, as a remedy to this finding of Latino vote dilution, the city created six-member voting districts and one at-large position, including three majority-Latino districts.[129]

iv. Aguilar v. Yakima County (2020)

By 2020, the Latino community comprised nearly half of Yakima County's total population (49.3 percent) and one-third of the voting age population (31.4 percent), but only one Latino candidate had ever been elected to the Board of Yakima County Commissioners, almost

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[125] Kristin M. Kraemer, "ACLU sue Pasco, saying election system violates federal Voting Rights Act," *Tri-Cities Herald* (Pasco, Kennewick, and Richland, WA), August 4, 2016, https://www.tri-cityherald.com/article93813632.html. For demographic data, see U.S. Census Bureau, *American Community Survey 2014-2018 5-Year Estimates* (2019), https://data.census.gov/cedsci/.

[126] Gene Johnson, "Pasco's voting system weakens Latino voice, ACLU suit charges," *Seattle Times* (Seattle, WA), August 7, 2016, https://www.seattletimes.com/seattle-news/pascos-voting-system-weakens-latino-voice-aclu-suit-charges/.

[127] Lani Guinier, "The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success," *Michigan Law Review* 89:5 (1991), 1077-1154, Jason P. Casellas, "Latino Representation in U.S. Congress: To What Extent Are Latinos Substantively Represented," Presented at the 2002 Meeting of the Southern Political Science Association, Savannah, Georgia, November 6-8 (2002), Sophia J. Wallace, "Examining Latino Support for Descriptive Representation: The Role of Identity and Discrimination," *Social Science Quarterly* 95:2 (2014), 311-327, and Nicholas O. Stephanopoulous, "Race, Place, and Power," *Stanford Law Review* 68 (2016), 1323-1408.

[128] *Glatt v. City of Pasco*, Case No. 4:16-CV-05108 (E.D. Wash. Jan. 27, 2017); Kristin M. Kraemer, "Pasco approves first step in getting federal fix for voting-rights issue," *Tri-Cities Herald* (Pasco, Kennewick, and Richland, WA), August 17, 2016, https://www.tri-cityherald.com/news/local/article96327547.html.

[129] Memorandum Opinion and Order, *Bertha Arana Glatt et al. v. City of Pasco et al.*, No. 4:16-CV-05108, United States District Court, E.D. Washington, 2016.

twenty years earlier.[130] In 2020, a group of Latino residents of Yakima County and the group OneAmerica filed a complaint under Washington's Voting Rights Act (WVRA) to challenge the at-large election system used to elect the three County commissioners, which denied Latino voters from electing a candidate of their choice to the board.[131]

The Latino voters argued that Latinos lived in "heavier concentrations in Yakima City and Sunnyside," representing an identifiable bloc of voters.[132] Moreover, they alleged that the at-large elections in Yakima County exhibited racially polarized voting, wherein Latino voters preferred Latino candidates while white voters preferred white candidates.[133] For example, in a couple of recent elections, Latino-preferred candidates won their primary races but were defeated

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[130] Enrique Perez De La Rosa, "Déjà Vu All Over Again: Suit Alleges Latinx Voters Disenfranchised By Yakima County Election System," Northwest Public Broadcasting, July 13, 2020, https://www.nwpb.org/2020/07/13/deja-vu-all-over-again-suit-alleges-latinx-voters-disenfranchised-by-yakima-county-election-system/, and Jessica Perez, "Latino voters have a fighting chance for representation with changes coming to Yakima County's voting system," NBC Rights Now, September 1, 2021, https://www.nbcrightnow.com/news/latino-voters-have-a-fighting-chance-for-representation-with-changes-coming-to-yakima-countys-voting/article_f7633c6a-0b7d-11ec-89a2-5fe11b592346.html. For demographic data, see U.S. Census Bureau, *American Community Survey 2014-2018 5-Year Estimates* (2019), https://data.census.gov/cedsci/.

[131] Complaint for Injunctive Relief Under the Washington Voting Rights Act, *Aguilar et al. v. Yakima County et al.*, No. 20-2-0018019, Superior Court of Washington for Kittitas County, 2020. The Voting Rights Act of Washington reads, "The legislature finds that electoral systems that deny race, color, or language minority groups an equal opportunity to elect candidates of their choice are inconsistent with the right to free and equal elections as provided by Article I, section 19 and Article VI, section 1 of the Washington state Constitution as well as protections found in the Fourteenth and Fifteenth amendments to the United States Constitution. The well-established principle of 'one person, one vote' and the prohibition on vote dilution have been consistently upheld in federal and state courts for more than fifty years. The legislature also finds that local government subdivisions are often prohibited from addressing these challenges because of Washington laws that narrowly prescribe the methods by which they may elect members of their legislative bodies. The legislature finds that in some cases, this has resulted in an improper dilution of voting power for these minority groups. The legislature intends to modify existing prohibitions in state laws so that these jurisdictions may voluntarily adopt changes on their own, in collaboration with affected community members, to remedy potential electoral issues so that minority groups have an equal opportunity to elect candidates of their choice or influence the outcome of an election. The legislature intends for this chapter to be consistent with federal protections that may provide a similar remedy for minority groups. Remedies shall also be available where the drawing of crossover and coalition districts is able to address both vote dilution and racial polarization." See Voting Rights Act, RCW 29A.92, Washington State Legislature, https://app.leg.wa.gov/RCW/default.aspx?cite=29A.92.

[132] Complaint for Injunctive Relief Under the Washington Voting Rights Act, *Aguilar et al. v. Yakima County et al.*, No. 20-2-0018019, Superior Court of Washington for Kittitas County, 2020, 5.

[133] *Id.* at 6.

in the general elections.[134] Debra Manjarrez in 2016, "won the four-way primary for District 2 with 36% of the votes, while Commissioner Ron Anderson followed with 30% of votes."[135] Then, in 2018, Susan Soto Palmer "won the seven-way primary with 26% of the votes while Commissioner Norm Childress followed with 18%."[136] However, both Anderson and Childress went on to win the general elections, defeating Latino-preferred candidates Manjarrez and Soto Palmer.[137] Plaintiffs also presented evidence demonstrating the "probative factors" relevant under the WVRA, including but not limited to a history of discrimination, voting procedures that enhance discrimination, effects of past discrimination and disparities in voter registration and turnout, racial appeals, and a lack of responsiveness by county officials.[138]

In August 2021, prior to the scheduled trial for the case, the parties settled with the Yakima County Board of Commissioners, stipulating that there was "sufficient evidence from which the Court could find a violation of the Washington Voting Rights Act" and agreed to replace its at-large election system with single-member districts, including one majority-Latino district.[139]

v. *Portugal v. Franklin County (2022)*

In Franklin County, the Latino population had increased to almost 54 percent of the County's total population in 2020 and 34 percent of eligible voters.[140] Yet Latino residents such

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[134] Phil Ferolito, "One America sues Yakima County, saying voting system disenfranchises Latinos," *Yakima Herald-Republic* (Yakima, WA), July 13, 2020, https://www.yakimaherald.com/news/local/oneamerica-sues-yakima-county-saying-voting-system-disenfranchises-latinos/article_89d36911-eb29-51fe-9812-f8527aa3256a.html.
[135] *Id.*
[136] *Id.*
[137] *Id.*
[138] Plaintiffs' Motion for Summary Judgment, *Aguilar et al. v. Yakima County et al.*, No. 20-2-0018019, Superior Court of Washington for Kittitas County, 2021.
[139] Motion to Approve Settlement and Enter Final Judgment, October 21, 2021, *Aguilar et al. v. Yakima County*, No. 20-2.00180-19, Superior Court of Washington for Kittitas County, 2.
[140] U.S. Census Bureau, *American Community Survey 2014-2018 5-Year Estimates* (2019), https://data.census.gov/cedsci/.

as Ana Ruiz Peralta, who was in the top two vote-getters in the primary election and advanced to, but lost the general election for a commissioner seat, stated that the county's Latino population (who predominantly live in Pasco) "didn't see any representation" on the Board of Commissioners.[141] To challenge the dilution of their voting strength, a group of Latinos sued Franklin County.[142] One of the Plaintiffs argued that the "districts and election process [made] it impossible for Latinos in the county to elect a candidate" of choice.[143]

Moreover, Latino Plaintiffs in their lawsuit alleged that Franklin County's "hybrid district and at-large election models [diluted] the voting power of the Latino community" and cracked the Latino community into three districts.[144] Although the Latino community was "large enough and sufficiently geographically compact to comprise a majority-minority district," it was split and as a result, the system of election diluted their voting strength. Additionally, the Plaintiffs alleged that Franklin County Commissioner elections exhibited racially polarized voting between 2008 and 2020.[145]

In 2022, Franklin County and the Latino Plaintiffs settled, reaching an agreement that would keep "most of east Pasco, which is heavily Latino, inside a single district rather than being divided among all three districts."[146] The agreement also stated that starting in 2024, all future elections for Franklin County's commissioners will be conducted using single-member districts

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[141] Nina Shapiro, "Voting-rights battle in Washington state raised allegations of diluting Latino votes," *Seattle Times* (Seattle, WA), May 16, 2021, https://www.seattletimes.com/seattle-news/politics/voting-rights-battle-in-washington-state-raises-allegations-of-diluting-latino-votes/.
[142] Cameron Probert, "Franklin County sued for elections that discriminate against Latino voters," *Tri-Cities Herald* (Pasco, Kennewick, and Richland, WA), May 4, 2021, https://www.tri-cityherald.com/news/politics-government/article250897179.html.
[143] Cameron Probert, "Franklin County lawsuit settlement looks to give voters more of a voice," *Tri-Cities Herald* (Pasco, Kennewick, and Richland, WA), May 12, 2022, https://www.tri-cityherald.com/news/politics-government/election/article261301917.html.
[144] Amended Complaint for Injunctive Relief Under the Washington Voting Rights Act, *Portugal et al. v. Franklin County et al.*, No. 21-2-50210-11, Superior Court of Washington for Franklin County, 2021, 2.
[145] *Id.* at 8.
[146] Cameron Probert, "Franklin County lawsuit settlement looks to give voters more of a voice."

for both the primary and general elections.[147] The County also agreed to a draw a district map that does not crack the Latino vote.[148]

C. Lack of Bilingual Ballots and Assistance Despite VRA of 1975

Additionally, the state's and local jurisdictions' historical failure to provide information and election materials to voters with limited English skills, including Latinos, has hampered their opportunities to fully participate in elections.[149] Language accommodation is crucial for "democratic participation and political empowerment for all citizens."[150] After the state's English literacy test was banned under the amended Voting Rights Act of 1970, Latino voters in Central Washington were not provided with language accommodations.[151] For example, during the United Farm Worker Cooperative's 1972 voter registration drive, organizers realized that many were unaware that literacy tests were no longer allowed or that the residency requirement had changed from ninety to sixty days.[152] While voters whose primary language was English benefitted from being aware of registration changes, residency requirement changes, pertinent voting issues, voting locations, candidate filing information, and/or election results, Latino voters

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[147] Cameron Probert, "Franklin County agrees to settle voting rights lawsuit. Elections will change," *Tri-Cities Herald* (Pasco, Kennewick, and Richland, WA), May 4, 2022, https://www.tri-cityherald.com/news/politics-government/article261045947.html. Joint Order Approving Settlement and Order of Dismissal, *Portugal et al. v. Franklin County et al.,* No. 21-2-50210-11, Superior Court of Washington for Franklin County, 2021.
[148] *Id.*
[149] In 1975, when the Voting Rights Act was expanded to include coverage for language minorities, Congress determined that the nation's education system had failed to properly educate racial minorities. In certain jurisdictions, it was evident that language minorities had higher illiteracy rates than the national average. See, "The Voting Rights Act, Ten Years After: A Report of the United States Commission on Civil Rights," United States Commission on Civil Rights (Washington D.C., 1975).
[150] Angelo N. Ancheta, "Language Accommodation and the Voting Rights Act," *California Law Review-Berkeley Law* (2007), https://www.law.berkeley.edu/files/ch_11_ancheta_3-9-07.pdf.
[151] Voting Rights Act of 1965, Public Law 89-110, codified as amended at 42 U.S.C. (1970).
[152] Jesus Lemos, "A History of the Chicano Political Involvement" (Master's Thesis, University of Washington, 1974), 101.

whose dominant language was not English were unaware of this information and therefore unable to exercise the right to vote equally.[153]

In January of 1975, the U.S. Commission on Civil Rights published a report called "The Voting Rights Act: Ten Years After." Their findings acknowledged that the "registration of Spanish-speaking voters throughout the United States [lagged] behind that of blacks and well behind that of whites."[154] To address the cultural challenges facing citizens with limited English proficiency, Congress in 1975 extended the VRA of 1965 and included Section 203, which required counties with more than 10,000 residents or over 5 percent of the population with limited English skills to provide bilingual "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" to bring these citizens into the voting process.[155]

In 1976, Yakima County was "designated by the Director of the Census as a jurisdiction subject to the requirement of Section 203 for persons of Spanish heritage."[156] And according to former Yakima County Auditor Bettie Ingram, Yakima County provided voting ballots in Spanish from 1976 to 1982.[157] Although the county provided bilingual ballots for six years, it failed to fully comply with Section 203 by not proving bilingual assistance at county offices and polling places.[158] Despite the availability of Spanish ballots, with no bilingual personnel to act as

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[153] The archived state's voters' pamphlets from the 1914-2002 all appear to be published in English only. Starting in 2003, the pamphlets include a reference that the information was available in languages other than English. See "Elections: Archived Voters' Pamphlets since 1914," Washington Secretary of State, https://www.sos.wa.gov/elections/voters-pamphlets.aspx.

[154] United States Commission on Civil Rights, *1975 Commission on Civil Rights Report*, Washington: U.S. Government Printing Office, 1975, 57.

[155] Voting Rights Act Amendments of 1975, Voting Rights Act, Section 203, Public Law No. 94-73.

[156] *United States of America v. Yakima County, Corky Mattingly, Yakima County Auditor, et al.*, CV-04-3072-LRS, Eastern District of Washington, Yakima Division, 2004.

[157] Tom Roeder, "Yakima County Had English, Spanish Ballots 20 Years Ago," *Yakima Herald-Republic* (Yakima, WA), August11, 2002.

[158] Tom Roeder, "Yakima County Had English, Spanish Ballots 20 Years Ago," *Yakima Herald-Republic* (Yakima, WA), August 11, 2002, and Luis Ricardo Fraga, "Expert Report Submitted on Behalf of Plaintiffs in Montes v. City

mediators in the registration process, Latinos in Yakima County were less likely to turn out to vote. In Yakima, Washington, the county's largest city, a full-time bilingual coordinator would be hired only in 2004.[159] Prior to that hiring, Latinos with limited English skills had no help to effectively participate in electoral politics.

After decades of Washington and, in particular, Yakima County, doing little to nothing to enable Latino registration and voting, the Department of Justice (DOJ) intervened in 2002.[160] The DOJ observed that the County's Latino population from 1990 to 2000 grew by 77 percent, and "over the same period, the number of people who said they didn't speak English well doubled from 8 to 16 percent of the population."[161] Therefore, in 2002, county officials were formally notified by the DOJ that Yakima County had to provide bilingual materials to voters with limited English skills under Section 203.[162] Subsequently, Yakima County officials were "mandated" to provide bilingual ballots and hire bilingual registrars to assist Latino voters.[163]

In 2004, the Justice Department released a report stating that the county had made progress but found that "hostility to bilingual election workers and Spanish-speaking voters continues to be an issue in Yakima County."[164] The DOJ filed a complaint against Yakima for violating Section 203 of the Voting Rights Act and outlined the County's deficiencies.[165] Prior to the case's adjudication, the county reached an agreement with the DOJ that it did "not admit to

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of Yakima," *Rogelio Montes and Mateo Arteaga et al. v. City of Yakima et al.*, No. 12-CV-3108-TOR, United States District Court, E.D. Washington, 2014, 41-42.

[159] Lázaro Cárrion, "Voting Rights of Latinos in Yakima and Enforcement by the State," *The State of the State for Washington Latinos*, Whitman College, 2008, walatinos.org.

[160] Tom Roeder, "Bilingual Election Ballots Mandated: Demographic Changes in Yakima County Trigger Change Under Voting Rights Act," *Yakima Herald-Republic* (Yakima, WA), August 3, 2002.

[161] *Id.*

[162] *Id.*

[163] *Id.*

[164] "County Makes Progress in Helping Spanish-Speaking," *Seattle Post-Intelligencer* (Seattle, WA), October 25, 2004.

[165] Complaint, *United States of America v. Yakima County, Corky Mattingly, Yakima County Auditor, et al.*, Civic No. CV-04-3072-LRS, United States District Court for Eastern District Yakima Division, July 6, 2004.

the allegations of the complaint" but agreed to comply with the recommendations of the Justice Department in a consent decree.[166]

Presently, King, Adams, Franklin, and Yakima counties are required to provide bilingual materials and assistance to Latino voters under Section 203.[167] Latino voters in Washington, particularly those with limited English skills, continue to face language barriers to register and vote. The percent of Spanish speakers with limited English proficiency (LEP) is 38.1.[168] And studies have shown that LEP voters have much lower participation rates than non-LEP voters.[169] To increase their registration and turnout rate, residents in Franklin County have argued that city council meetings (especially related to redistricting) need to be translated from English to Spanish.[170] Israel Delamor stated, "I keep hearing that people are not getting information. So, if I am somebody speaking Spanish, how can I get this information that needs to be provided. If we are trying to reach the Latino community, how can I access that? Is it being accessible in Spanish too?" Unfortunately, in places like Yakima County and Franklin County, city meetings will continue to be conducted in English only, to the detriment of its LEP constituents.

Over the last several decades, there have been multiple court cases in Washington's Yakima Valley and Pasco areas challenging English literacy tests, at-large elections systems, and

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[166] Consent Decree, *United States of America v. Yakima County, Corky Mattingly, Yakima County Auditor, et al.*, CV-04-3072-LRS, United States District Court for Eastern District Yakima Division, September 3, 2004, 4.
[167] U.S. Census Bureau, Determinations Under Section 203, Federal Register Notice (Dec. 8, 2021, https://www.govinfo.gov/content/pkg/FR-2021-12-08/pdf/2021-26547.pdf; Joy Borkholder, "Investigation finds Latino ballots in WA more likely to be rejected," *Crosscut*, February 15, 2021, https://crosscut.com/politics/2021/02/investigation-finds-latino-ballots-wa-more-likely-be-rejected.
[168] State Immigration Data Profiles: Washington (2019) and United States (2019), Migration Policy Institute, https://www.migrationpolicy.org/data/state-profiles/state/language/WA/US.
[169] Terin M Barbas, "We Count Too-Ending the Disenfranchisement of Limited English Proficiency Voters," *Florida State University Law Rev.* 37 (2009): 189, and Jocelyn Benson Friedrichs. "Su Voto es su Voz-Incorporating Voters of Limited English Proficiency into American Democracy," *Boston College Law Review* 48 (2007): 251.
[170] Johanna Bejarano, "Franklin County Latino Population Wants More Redistricting Information in Spanish," Northwest Public Broadcasting, October 15, 2021, https://www.nwpb.org/2021/10/15/franklin-county-latino-population-wants-more-redistricting-information-in-spanish/.

the lack of bilingual materials and assistance. These cases and the circumstances surrounding them provide evidence of the extensive history of voting-related discrimination against Latinos in Washington and, in particular, in the cities of Yakima and Pasco.

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

There is evidence of historical and contemporary voter suppression tactics that obstruct Latino voters' ability to fully and effectively cast a ballot, such as off-year elections and disproportionate signature rejections.

A. Off-Year Elections

Voter registration and turnout statistics in Yakima and Franklin Counties demonstrate that Latino voting power in the 15th legislative district is weakened because more state legislative elections occur during non-presidential years, when the voter turnout including that of Latino voters is lowest. Even in presidential years, where voter turnout rates tend to be higher for Latino and white voters, turnout rates of Latino voters in Yakima County are lower when compared with white voters (see Table 2). In Yakima County, where election turnout data is available by Spanish surname, there is clear evidence that the voter turnout rate is much lower for Latinos in non-presidential election years than in presidential election years.[171] According to the County's own data, in elections from 2016 to 2020, voters with non-Spanish surnames voted at twice the rate or higher than Spanish surname voters.[172] And overall in the state, Table 3 illustrates that voter registration among Latinos is lower than white voters.[173]

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[171] "Turnout Statistics" and "Voting by Surname," Yakima County Webpage, https://www.yakimacounty.us/1120/Turnout-Statistics.
[172] *Id.*
[173] "Voting and Registration in the Election of 2020," U.S. Census Data, April 2021, https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html.

Off-year elections therefore act to enhance the opportunity for discrimination against Latinos, as there continues to be "a very low amount of Latino or specifically Spanish surname voter turnout in the Yakima Valley."[174] Because Latinos register at lower rates than whites and their turnout is lower especially in non-presidential election years, their chance of electing a preferred candidate is drastically reduced.

Table 2: Yakima County Voter Turnout Rates (General Election Results Only)[175]

	Presidential Election Year (Y or N)	Registered Voters	Total Ballots Cast	County Turnout Rate	Non-Spanish Surname Turnout	Spanish Surname Turnout Rate
Yakima County						
2020	Yes	127,692	96,985	75.95%	84%	56%
2019	No	119,198	13,026	27.65%	40%	16%
2018	No	115,873	71,585	61.78%	70%	41%
2017	No	114,669	32,207	28.09%	34%	13%
2016	Yes	114,075	80,912	70.93%	76%	56%

Table 3: Reported Voting and Registration Between Latinos and Whites in the Elections of November 2014, 2016, 2018, and 2020 in Washington[176]

	Percent Registered (citizen)	Percent Voted (citizen)

[174] Johanna Bejarano, "Concerns About Low Voter Turnout Amongst Latinos in Washington," Northwest Public Broadcasting, https://www.nwpb.org/2022/03/29/concerns-about-low-voter-turnout-amongst-latinos-in-washington-state/.

[175] "Turnout Statistics" and "Voting by Surname," Yakima County Webpage, https://www.yakimacounty.us/1120/Turnout-Statistics, and "Election Results," Frank County Auditor's Office Webpage, http://www.co.franklin.wa.us/auditor/elections/electionresults.php.

[176] "Voting and Registration in Election of 2014, U.S. Census Data, July 2015, https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-577.html, Voting and Registration in the Election of 2016," U.S. Census Data, May 2017, https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-580.html, "Voting and Registration in Election of 2018, "U.S. Census Data, April 2019, https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-583.html, and "Voting and Registration in the Election of 2020," U.S. Census Data, April 2021, https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html.

2020		
White	78.2%	75.0%
Latino	61.0%	53.7%
2018		
White	74.6%	63.4%
Latino	57.2%	43.7%
2016		
White	78.2%	69.5%
Latino	62.9%	47.2%
2014		
White	71.6%	53.0%
Latino	44.8%	25.1%

B. Disproportionate Signature Rejection

A non-profit agency recently uncovered that Latino voters in Washington have a higher than average ballot signature rejection rate, and it is especially high in the Yakima Valley and Pasco region.[177] For the November 2020 election, Latinos had their ballots rejected for signature mismatch at "four times the rate of other voters" and in "eight counties, Latino voters contributed 17% of accepted ballots…but 46% of ballot rejection."[178] In Yakima County, Latino voters' ballots were rejected 7.5 times more than other voters and in Franklin County, the rejection rate was 3.9 times greater for Latino voters.[179] Because the ballots of people with Spanish surnames

[177] Joy Borkholder, "Investigation finds Latino ballots in WA more likely to be rejected."
[178] *Id.*
[179] The rejection rate for the other six counties is: Adams, 4.2 percent, Benton, 3.4 percent, Chelan, 6.3 percent, Douglas, 10.4 percent, Grant, 5.1 percent, and Walla Walla, 3.8 percent. Joy Borkholder, "Investigation finds Latino ballots in WA more likely to be rejected."

(i.e. Latinos) are rejected at a higher rate than white people in the Yakima Valley and Pasco region, the use of verification of signatures places these voters at a disadvantage.[180] Latino voters in Benton, Yakima, and Chelan Counties have filed a lawsuit claiming that the "ballot signature matching provisions and processes" have a "discriminatory application," denying the voting rights of over 4,500 Latino voters in the November 2020 elections.[181]

Senate Factor 5: Latinos Bear the Effects of Discrimination in Ways That Hinder Their Ability to Participate Effectively in the Political Process

There is a long history of discrimination in Central Washington, including the Yakima County and Pasco region, that has led to significant disparities between whites and Latinos that still exist today. As demonstrated below, Latinos in this region are at a disadvantage relative to whites in education, housing, socioeconomic status and employment, health, and criminal justice. These disparities hinder and limit the ability of Latino people to participate fully in the electoral process.

In the region assessed, I include statistical data for Adams, Benton, and Grant Counties (in addition to Yakima and Franklin Counties) because those counties are joined with the Yakima Valley and Pasco region in the enacted legislative districts 14 and 15. Much of the data gathered and analyzed comes from the American Community Survey, which annually produces statistical information.[182]

A. Education

[180] Mike Baker, "Rejected Mail Ballots Are Showing Racial Disparities," *New York Times* (New York, New York), February 2, 2022, https://www.nytimes.com/2022/02/02/us/mail-voting-black-latino.html.
[181] Kristine M. Kraemer, "Benton County officials sued for rejecting Latino voter ballots 3+ times more often," *Tri-City Herald* (Pasco, Kennewick, and Richland, WA), May 24, 2021, https://www.tri-cityherald.com/news/politics-government/election/article251484873.html, and Amended Complaint for Declaratory and Injunctive Relief, *Reyes, et al. v. Chilton, et al.*, No. 4:21-CV-5075, United States District Court, E.D. Washington, May 7, 2021.
[182] "Design and Methodology Report," American Community Survey, U.S. Census Bureau, https://www.census.gov/programs-surveys/acs/methodology/design-and-methodology.html.

Washington has a history of segregation and discrimination in its education system, the impact of which continues today. Although *Brown v. Board of Education* (1954) outlawed segregation, ethnic Mexicans in K-12 schooling have and continue to be "linguistically segregated" as school officials in Washington (and other states) label these students as "English language learners" (ELL), many of whom come from migrant farm worker backgrounds.[183] This has resulted in the segregation of ELL in schools, limiting their "exposure to English of their non-ELL counterparts."[184] For example, in June 1970, the Washington State Board Against Discrimination (WSBAD) conducted an investigation into the North Franklin and Kahlotus School Districts located in Franklin County.[185] The report stated that the North Franklin School District seemed unwilling to accept Latino migrant students unless they were placed in a segregated school. The school district identified a building for ELL but insisted that the state had to provide the district with $41,000 to re-open the facility. According to the report by WSBAD, a labor leader commented that placing these students in a different school "would be against the law since this would be a segregated school."[186] State officials declined the proposal by the Franklin School District. Instead, the migrant children were accepted at the Kahlotus School District where they fared no better. Hebert Valdez, Director of the Kahlotus Migrant Program,

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[183] Beatriz Arias, "School Desegregation, Linguistic Segregation, and Access to English for Latino Students," *Journal of Educational Controversy* 2:1 (2007), https://cedar.wwu.edu/cgi/viewcontent.cgi?article=1034&context=jec. On Chicanos and school segregation, see David G. Garcia, *Strategies of Segregation: Race, Residence, and the Struggle for Educational Equality* (University of California Press, 2018); and Richard R. Valencia, *Chicano Students and the Courts: The Mexican American Legal Struggle for Educational Equality* (United Kingdom: NYU Press, 2010). Brown v. Board of Education (1954) prohibited the segregation of schools based on race. See, *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

[184] Beatriz Arias, "School Desegregation, Linguistic Segregation, and Access to English for Latino Students," 9.

[185] "The Kahlotus School District's Migrant Program, March 2 to June 2, 1970, A Report of an Investigation Conducted by the Washington State Board Against Discrimination from May 28 to June 18, 1970," Theresa Aragon de Shepro papers, Box 2, Folder 8, Record Group No. 19.16.2913. Special Collections, University of Washington Libraries, Seattle, Washington.

[186] The Kahlotus School District's Migrant Program, March 2 to June 2, 1970, A Report of an Investigation Conducted by the Washington State Board Against Discrimination from May 28 to June 18, 1970," Theresa Aragon de Shepro papers.

would write to Washington's Superintendent that the students were segregated, provided with limited instructional materials, district staff had no training related to the needs of migrant students, and no certificated teacher was hired to instruct the students.[187] After Valdez raised the issue of segregation, he was immediately terminated by the Kahlotus School District's superintendent.[188]

With a keen understanding that Chicano youth faced numerous barriers in Washington's K-12 education system including segregation, Chicano college and university students have demanded that school administrators recruit, retain, and graduate more Chicano students. At institutions of higher education, including the University of Washington, Washington State University, and Yakima Valley College (formerly Yakima Valley Community College), students have protested and occupied buildings to bring attention to their issues.[189]

Gaps in educational opportunities and attainment between Latino and white students are not relics of the twentieth century. In 2018, Latino students had a four-year high school graduation rate of 75.2 percent, which was lower than their white counterparts who graduated at a rate of almost 83 percent.[190] And of the 12,858 Latino students who received a diploma, only 99 graduated with their associate degree (0.77 percent).[191] Of the 39,549 white students who

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[187] Letter from Hebert Valdez to Dr. Louis Bruno, Superintendent, Theresa Aragon de Shepro papers, Box 2, Folder 8, Record Group No. 19.16.2913. Special Collections, University of Washington Libraries, Seattle, Washington.
[188] "Migrant School Head Suspended," *Tri-City Herald* (Pasco, Kennewick, Richland, WA), May 25, 1970.
[189] On the Chicano Student Movement in Washington State see: Oscar Rosales Casteñeda, "El Movimiento in Washington State: Activism in the Yakima Valley and Puget Sound regions," in *We Are Aztlán: Chicanx Histories in the Northern Borderlands*, edited by Jerry Garcia (Washington State University Press, 2017), and Oscar Rosales Casteñeda, "The Chicano Movement in Washington State, 1967-2006," *The Seattle Civil Rights and Labor History Project*, University of Washington, https://depts.washington.edu/civilr/Chicanomovement_part1.htm; and Daniel Estrada and Richard Santillan, "Chicanos in the Northwest and the Midwest United States: A History of Cultural and Political Commonality," *Perspectives in Mexican American Studies* 6 (1997): 194-227.
[190] Deb Came, "Report to the Legislature: Graduation and Dropout Statistics," Office of Superintendent of Public Instruction, 2019, https://www.k12.wa.us/sites/default/files/public/communications/2019-01-GraduationDropoutStatistics.pdf, 6.
[191] *Id.*

received a diploma, 678 (1.71 percent) received their associate degree.[192] With respect to dropout rates, an estimated 15 percent of Latinos left school early, in comparison with 9.9 percent of whites.[193]

Racial discrimination and a lack of resources have contributed to the gaps in educational opportunities for Latino students. Latino parents encounter significant communication barriers with school staff and teachers because bilingual services are not always available.[194] In response to Latino parents' grievances, the state has only recently passed a "new law [that] requires school districts to create plans for helping families access interpretation services for parents when they must speak with school officials."[195]

Moreover, Latino students in the K-12 education system face racial discrimination that hinders their academic potential. In 2005, Latino parents litigated against the Brewster School District in Brewster, Washington. Their case argued that "Offensive comments, name-calling, graffiti and derogatory jokes about Latinos are tolerated and accepted by district administrators and employees; The school district implemented a curriculum that demeans Latino students; Teachers have inappropriately used racially demeaning language in class; [and] No meaningful racial harassment or diversity training has been provided."[196] The case was settled and the

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[192] *Id.*
[193] Deb Came, "Report to the Legislature: Graduation and Dropout Statistics," 11.
[194] Francis Contreras, "Education," *Washington State Latino/Hispanic Assessment Report, 2009-2010*, Washington State Commission on Hispanic Affairs, https://static1.squarespace.com/static/5915f65ed482e94b3f60b25f/t/5bef266df950b73a0a722bf5/1542399602953/2009-2010+CHA+Assessment+Report+-+English.pdf, 24.
[195] Venice Buhain, "Family access to interpreters in schools expands under new WA laws," *Crosscut*, April 26, 2022, https://crosscut.com/news/2022/04/family-access-interpreters-schools-expands-under-new-wa-laws.
[196] "Parents sue district over treatment of Latinos," *Seattle Times* (Seattle, WA), November 2, 2005.

district was required to take effective steps to prevent discrimination against its Latino student body.[197]

In Adams, Benton, Franklin, Grant, and Yakima Counties, there remain stark educational attainment differences between Latino and white residents (see Table 4). An estimated 45 percent of Latinos in Adams County have a high school diploma versus 90 percent of white residents. And while 90 percent of white people have a bachelor's degree or higher, a much smaller percentage of Latinos (26.2 percent) have received the same degree. In Benton County, only about 72 percent of Latino people have a high school diploma, compared to nearly 94 percent of white residents (a difference of 22 percent). A comparable disparity exists in the percentage of residents who have a bachelor's degree or higher, with the rate for white residents (32 percent) being more than double that of Latino residents (14 percent). In Franklin County, 56 percent of Latinos had a high school diploma, compared to 95 percent of whites. And only seven percent of Latinos have a bachelor's degree, which is more than three times lower than the rate for white residents (28 percent). An estimated 52 percent of Latinos in Grant County have a high school diploma in comparison to 88 percent of white residents. And while 21 percent of white people have a bachelor's degree or higher, a smaller percentage of Latinos (7.9 percent) have received the same degree. Similar trends appear in Yakima County, where the percentage of Latino people who have graduated from high school is 50 percent versus 77 percent for whites. And only six percent of Latino people in Yakima County possess a bachelor's degree or higher, a rate which is less than a third than that of whites (19.5 percent).

[197] "Discrimination lawsuit settled in Brewster," *Wenatchee World* (Wenatchee, WA), October 16, 2006. Opinion of the Court, *Anna Mendoza et at. v. Brewster School District*, No. CV-05-327-RHW, United States District Court, E.D. Washington, December 27, 2006.

Table 4. White and Latino Educational Inequalities in Adams, Benton, Franklin, Grant, and Yakima Counties, 2020[198]

	Latino	White
Adams County		
High School Graduate	45.8%	90.7%
Bachelor's Degree or Higher	3.6%	26.2%
Benton County		
High School Graduate	72.3%	93.4%
Bachelor's Degree or Higher	14.3%	32.8%
Franklin County		
High School Graduate	55.8%	95.0%
Bachelor's Degree or Higher	7.0%	28.2%
Grant County		
High School Graduate	51.9%	88.0%
Bachelor's Degree or Higher	7.9%	21.3%
Yakima County		
High School Graduate	50.0%	77%
Bachelor's Degree or Higher	6.5%	19.5%

B. Housing

As discussed above on pages 11-20, historically and continuing into present day, Washington's multi-billion-dollar agricultural industry, including food processing, has relied on Latino workers including a sizeable migrant and seasonal labor force. The state ranks first in

[198] U.S. Census Bureau, *American Community Survey 5-Year Estimates Subject Tables*, 2020

U.S. production of eleven commodities, including apples, sweet cherries, pears, hops, and red raspberries.[199] These labor-intensive crops depend on farm workers because some cannot be harvested by machines. The dependence of the agricultural industry on Latino workers has contributed to the overall growth of Latino people in Washington (see Table 5).

Table 5. Latino Population in Washington, 2000-2020[200]

	2000	2010	2020
Total Population	441,510	755,790	1,022,667
% of State Population	7.5%	11.2%	13.7%

Although agriculture is a cornerstone of the state's economy, housing for Latino farm workers has been and continues to be scarce, inadequate, overcrowded, substandard, and sometimes entirely lacking. According to Washington's Department of Community, Trade, and Economic Development (CTED), rural communities are unable to provide sufficient housing for Latino migrant and seasonal workers. "During the peak harvest seasons [July-October], a critical shortage of housing forces hundreds of migrant workers and their families to live in substandard and overcrowded housing, or to camp illegally, posing health and safety hazards to themselves and to the community," stated the CTED.[201] The CTED's report titled, "Farmworker Housing in Washington State: Safe, Decent, and Affordable," explained that "for many years" the state had been aware of the housing crisis but had failed to provide a solution. In fact, in 1997, the *Seattle Post-Intelligencer*, one of the state's largest newspapers, used its front page to highlight the

[199] "Agriculture: A Cornerstone of Washington's Economy," Washington State Department of Agriculture, https://agr.wa.gov/washington-agriculture.
[200] "Washington Data and Research," Washington's Office of Financial Management Website https://ofm.wa.gov/washington-data-research/statewide-data/washington-trends/population-changes/population-hispaniclatino-origin.
[201] Janet Abbett, "Farmworker Housing in Washington State: Safe, Decent, and Affordable," Department of Community, Trade, and Economic Development, State of Washington, https://www.commerce.wa.gov/wp-content/uploads/2018/06/HTF-Reports-Farm-Worker-Housing-Report.pdf.

horrible housing conditions in Mattawa, Washington (in Grant County). The photographs showed Latino farm workers and their families living outdoors along the Columbia River in "makeshift plastic tents" and "cobbled-together cardboard walls" with no roof.[202]

Despite the severe need for Latino farm worker housing, the local white community has been strongly opposed to the development of housing projects. In 2007, the Washington State Human Rights Commission (WSHRC) announced that the agency was "increasingly concerned about race and national origin discrimination against farmworkers in the area of housing."[203] The WSHRC collected statements that demonstrated white people's opposition to building farm worker housing.

> The Office of Rural and Farmworker Housing, a non-profit advocacy organization, filed two complaints with the WSHRC in 2002. The complaints were referred to the US Department of Justice due to their adverse impact on Hispanic farmworkers. Elements in both Pasco and Benton City attempted to prevent the construction of farmworker housing in their communities. In the Benton City case, some members of the community itself voiced loud opposition to the housing and were on record as stating that they did not want Benton City to become like Mabton, a mostly Latino community.
>
> In May 2007, the WSHRC hosted a Commission forum in Shelton, WA. A number of these attendees also spoke out about national origin discrimination in the area of housing.
>
> In July 2006, it was reported at a WSHRC forum that a contractor was renting a two bedroom house to 25 men at $200 a person in Sunnyside.
>
> In Wenatchee a trailer park was closed. The owner generously offered to relocate the residents. The community opposed it. The owner was unable to relocate the trailer park.
>
> In Royal City in 2001, 22 farmworker housing complaints were filed with HUD. The owner was charging inconsistent rents, giving fines

[202] "Their Homes Are Not Castles," *Seattle Post-Intelligencer* (Seattle, WA), November 23, 1997.
[203] "Farm Worker Housing and the Washington Law Against Discrimination," Briefing Paper, 2007, Washington State Human Rights Commission, https://www.digitalarchives.wa.gov/do/9DCE950092FFF83BFAC8FF3CDB39E522.pdf,1.

> for city ordinance violations, charging for children that worked in the fields. Nothing was done.
>
> In Mattawa, singlewide trailer houses are divided into apartments and rented to farmworkers. There were reports of raw sewage on the ground.
>
> In response to issues in Wenatchee, the WSHRC hosted a community forum in September 2007. Forum attendees spoke about many of the same issues, including lack of running water and electricity, unhealthy living conditions, shortage of housing, families forced to live in the orchards, and a neighborhood lawsuit to stop the construction of temporary migrant farmworkers in a neighborhood.[204]

The white community claimed that farm worker housing would create a high-density area of low-income housing and often used zoning rules and other regulations to prevent the construction of new housing.[205] Their actions, however, were not without a racial effect. It ensured that their communities would remain exclusively white neighborhoods.

In Yakima County, affordable housing for Latinos continues to be a challenge. Construction came to a standstill during the 2008 housing crisis and, "combined with a growing population and a small tax base with which to develop roads and infrastructure for new development, meant demand for housing outstripped supply," the county never fully recovered, stated the county's human services director.[206] The lack of housing units has contributed to Yakima County's homeless population, which doubled between 2019 to 2020.[207] Furthermore, in the City of Yakima, its city council is looking into how "a housing repair program funded by federal dollars" disproportionally helped white families.[208] "Of the 87 families assisted by the

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[204] *Id.* at 3-4.
[205] *Id.* at 4.
[206] Sydney Brownston, "Washington State's Rise in Homelessness Outpaced the Nation's, According to Report," *Seattle Times* (Seattle, WA), March 20, 2021.
[207] *Id.*
[208] Kate Smith, "Yakima City Council directs committee to review housing program after reported ethnic disparity," *Yakima Herald-Republic* (Yakima, WA), May 4, 2022, https://www.yakimaherald.com/news/local/yakima-city-council-directs-committee-to-review-housing-program-after-reported-ethnic-disparity/article_d9b4cbc7-e1ce-51a0-bc0b-95cfab5a5218.html.

program in 2021, about 96 percent of the families were white and about 25 percent of the families were Hispanic," according to U.S. Office of Housing and Urban Development.[209]

Given these and other factors, there are substantial inequalities in homeownership rates between Latinos and whites in the five selected counties (see Table 6). The white homeownership rate is 72 percent in Adams County, but its only 44 percent for Latinos. In Benton County, the white ownership rate is 87 percent while the Latino rate is drastically low at 12 percent. The homeownership percentage for whites in Franklin is 76 percent but only 35 percent for Latinos. The white homeownership is 79 percent versus 25 percent for Latinos in Grant County. And in Yakima County, 81 percent of whites reported owning their home, whereas the ownership rate for Latinos was 30 percent. The disparity in percentage of points in homeownership between whites and Latinos was almost 28 (Adams), 75 (Benton), 40 (Franklin), 54 (Grant) and 51 (Yakima).

Table 6. White and Latino Homeownership Rates in Adams, Benton, Franklin, Grant, and Yakima Counties, 2020[210]

	Latino	White
Adams County		
Homeownership Rate	44.9%	72.6%
Benton County		
Homeownership Rate	12.2%	87.1%
Franklin County		
Homeownership Rate	35.4%	76.2%
Grant County		
Homeownership Rate	24.8%	79.3%

[209] *Id.*
[210] U.S. Census Bureau, *American Community Survey 5-Year Estimates Subject Tables*, 2020

Yakima County		
Homeownership Rate	30.6%	81.8%

C. Socioeconomic Status and Employment

Latinos in Adams, Benton, Franklin, Grant, and Yakima Counties also experience adverse outcomes when it comes to socioeconomic status and employment. There are significant disparities in median household income and poverty levels in those counties (see Table 7). In Adams County, the median income for Latinos was $47,889 compared to $55,460 for whites with a difference of $7,571. On average, 29.9 percent of Latino people in Adams County live below the poverty line compared to only 18.7 percent of whites. Whites have a median income of $74,706 in Benton County, while for Latinos it is much lower at $51,590. The disparity is $23,116. Additionally, in this county, only 8.6 percent of whites live below the poverty line, whereas 21.6 percent of Latinos do. In Franklin County, the median income for Latinos was $56,321 compared to $71,882 for whites with a difference of $15,562. On average, 18.8 percent of Latino people in Franklin County live below the poverty line compared to only 10.9 percent of whites. Similar patterns are observable in Grant County where the median household income is $64,530 for whites versus $50,143 for Latinos. In Grant County, 21 percent of Latinos have incomes below the poverty level compared with just 12.4 percent of whites. For Yakima County, whites had a median household income of $56,287 whereas Latinos had an income of only $49,523. Further, 20.5 percent of Latino people in Yakima County live below the poverty level, compared to 14.3 percent of whites.

Table 7. White and Latino Median House Incomes and Poverty Rates in Adams, Benton, Franklin, Grant, and Yakima Counties, 2020[211]

	Latino	White
Adams County		
Median Household Income	$47,889	$55,360
Below Poverty Level	29.9%	18.7%
Benton County		
Median Household Income	$51,859	$74,706
Below Poverty Level	21.6%	8.6%
Franklin County		
Median Household Income	$56,321	$71,882
Below Poverty Level	18.8%	10.9%
Grant County		
Median Household Income	$50,143	$64,530
Below Poverty Level	21.0%	12.4%
Yakima County		
Median Household Income	$49,523	$56,287
Below Poverty Level	20.5%	14.3%

There are also noticeable socio-demographic disparities in relation to rates of unemployment in Adams, Benton, Franklin, Grant, and Yakima Counties (see Table 8). Across all five counties, Latino people on average had higher unemployment rates than whites.

[211] U.S. Census Bureau, American Community Survey, *5-Year Estimates Subject Tables*, 2020

Table 8. White and Latino Unemployment Rates in Adams, Benton, Franklin, Grant, and Yakima Counties, 2020[212]

	Latino	White
Adams County		
Unemployment Rate	6.5%	5.9%
Benton County		
Unemployment Rate	6.9%	4.9%
Franklin County		
Unemployment Rate	6.5%	5.3%
Grant County		
Unemployment Rate	6.4%	5.0%
Yakima County		
Unemployment Rate	8.3%	5.2%

D. Health

Although health care coverage and access to care among Latinos has improved since the passage of the Affordable Care Act in 2010, "the uninsured rate among Latinos [in the U.S.] is still more than double that among non-Latino Whites (20 vs. 8 percent in 2019)."[213] Similar to this nationwide trend, Latino people in Washington are uninsured at much higher rates compared to whites (see Table 9). The health care disparity was greatest in Grant County with a 13 percentage point difference, followed by a twelve percent difference in Adams, nine percent in Grant, eight percent in Franklin, and seven percent in Yakima. At least in part because of this lack of access, Latino health care providers such as the Yakima Valley Farm Workers Clinic and

[212] U.S. Census Bureau, *American Community Survey 5-Year Estimates Subject Tables*, 2020

[213] "Health Insurance Coverage and Access to Care Among Latins: Recent Trends and Key Challenges," Office of Health Policy, Issue Brief, October 8, 2021, https://aspe.hhs.gov/sites/default/files/documents/68c78e2fb15209dd191cf9b0b1380fb8/ASPE_Latino_Health_Coverage_IB.pdf.

Sear-Mar Community Health Center reported that Latinos sought health care mostly in emergency situations instead of using preventative health.[214]

Table 9. White and Latino Uninsured Healthcare Rates in Adams, Benton, Franklin, Grant, and Yakima Counties, 2020[215]

	Latino	White
Adams		
Uninsured Healthcare Rate	21.9%	8.8%
Benton County		
Uninsured Healthcare Rate	15.4%	6.0%
Franklin County		
Uninsured Healthcare Rate	20.2%	11.3%
Grant County		
Uninsured Healthcare Rate	20.6%	7.0%
Yakima County		
Uninsured Healthcare Rate	18.6%	10.8%

Latinos, especially farm workers, were also disproportionally impacted by COVID-19. Although Latinos were only 13 percent of the population, they were almost half of the state's COVID-19 cases.[216] Some Latino farm workers were hesitant to get tested because "they were under the impression they would have to pay to get tested for COVID-19."[217] Latino leaders

[214] Monica Maria Becerril Ugade, "Health," *Washington State Latino/Hispanic Assessment Report, 2009-2010*, Washington State Commission on Hispanic Affairs, 26-28, https://static1.squarespace.com/static/5915f65ed482e94b3f60b25f/t/5bef266df950b73a0a722bf5/1542399602953/2009-2010+CHA+Assessment+Report+-+English.pdf, 26-28.
[215] U.S. Census Bureau, *American Community Survey 5-Year Estimates Subject Tables*, 2020
[216] Lex Talamo, "Just 13% of the Washington is Hispanic, but they're nearly half of the state's COVID-19 cases. Community leaders say more needs to be done," *Yakima Herald-Republic* (Yakima, WA), July 24, 2020, https://www.yakimaherald.com/news/local/just-13-of-washington-is-hispanic-but-theyre-nearly-half-the-states-covid-19-cases/article_3edca57f-34c5-573a-ac19-86f3c61ddbcd.html. On the spread of COVID-19 in Washington State, see Barbara Baquero et al., "Understanding and Addressing Latinx COVID-19 Disparities in Washington state, *Health Education Behavior* 47:6 (December 2020), 845-849.
[217] *Id.*

expressed that county health districts had not worked closely enough with Latinos and that there was "misinformation and gaps in communication."[218] For example, the Latino Community Fund stated that the "lack of accurate information in Spanish that is easily accessible about coronavirus vaccines" contributed to higher COVID-19 rates, because there was "a lot of misinformation" in the Latino community.[219]

Contributing to the high rate of COVID-19 cases among the Latino population were large agricultural employers that did not want on-site testing.[220] Health officers stated that employers "either declined our one-site support and/or refused testing when recommended," because positive results would potentially force them to "lose a large percentage of their workforce if wide-scale testing found more employees with COVID-19."[221] Due to employers' unwillingness to provide testing, COVID-19 outbreaks were reported in fruit and meat packing facilities in Yakima and Franklin Counties, some of which led to protests by Latino workers.[222]

E. Criminal Justice

Limited economic opportunities, stereotyping, ineffective legal representation, lack of representation on juries, and unequal sentencing have created an inequitable criminal justice system for Latino people in Washington.[223] For example, Latino youth were incarcerated at a

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[218] *Id.*

[219] Margaux Maxwell, "Yakima County health forum combats vaccine misinformation in the Latino community," *Yakima Herald-Republic* (Yakima, WA), February 11, 2021, https://www.yakimaherald.com/news/local/lower_valley/yakima-county-health-forum-combats-vaccine-misinformation-in-the-latino-community/article_aa9e246f-7b1e-5261-bf91-fe621c246e82.html.

[220] Enrique Pérez De La Rosa, "How Yakima County Became the West Coast's COVID-19 Hot Spot," Northwest Public Broadcasting, June 14, 2020.

[221] *Id.*

[222] Mai Hoang, "Protests underway at 3 Yakima Valley fruit packing houses," *Yakima Herald-Republic* (Yakima, WA), May 12, 2020, https://www.yakimaherald.com/news/local/protests-underway-at-3-yakima-valley-fruit-packing-houses/article_a2438dd7-5314-52a8-b2b6-f72747ec8760.html and Annette Cary, "All Tyson workers at plant near Tri-Cities to be tested for coronavirus. Cases reach 100," *Tri-City Herald* (Pasco, Kennewick, Richland, WA), April 22, 2020, https://www.tri-cityherald.com/news/coronavirus/article242186636.html.

[223] On scholarship related to the discriminatory treatment of Latinos in the criminal justice system, see Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New Press, 2020), and Martin Guevara Urbina and Sofia Espinoza Alvarez, eds., *Hispanics in the U.S. Criminal Justice System: Ethnicity,*

disproportionate rate in counties where Latino people were more than twenty-five percent of the population (see Table 10).

Table 10. Latino Rate of Incarceration in Select Counties, 2009[224]

	Rate of Incarceration	Latino County Population
Adams County	66.4%	54.1%
Franklin County	62.2%	59.3%
Grant County	47.1%	36.6%
Yakima County	55.3%	42.5%

A 2021 report on the state's criminal justice system documented key findings on "race disproportionality and disparity" in the system.[225] The study, which was submitted to the Washington State Supreme Court, uncovered that racial minorities disproportionately tended to be stopped, searched, arrested, convicted, sentenced to legal financial obligations, receive longer sentences, incarcerated, and "are more likely to be victims of police use of force."[226] Regarding Latinos specifically, the report found that they "are more likely to receive a standard sentence than any of the five sentencing alternatives."[227] In addition, Latinos are "statistically more likely to be subject to high discretion searches" than whites.[228] Latino youth represent only 22 percent of the state's youth population, but make up 28.3 percent of the juvenile detention population.[229]

Ideology, and Social Control (United States: Charles C Thomas, Publisher, 2018), Lupe S. Salinas, *U.S. Latinos and Criminal Injustice* (Michigan State University Press, 2015), and José Luis Morín, *Latino/a Rights and Justice in the United States: Perspectives and Approaches* (Carolina Academic Press, 2009),

[224] Adapted from the *Washington State Latino/Hispanic Assessment Report, 2009-2010*, Washington State Commission on Hispanic Affairs, 32, https://static1.squarespace.com/static/5915f65ed482e94b3f60b25f/t/5bef266df950b73a0a722bf5/1542399602953/2009-2010+CHA+Assessment+Report+-+English.pdf.

[225] Race and the Criminal Justice System, Task Force 2.0, "Race and Washington's Criminal Justice System: 2021 Report to the Washington Supreme Court" (2021), https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1116&context=korematsu_center.

[226] *Id.* at 2-4.

[227] *Id.* at H-3.

[228] *Id.* at K-4.

[229] *Id.* at M-7.

Another study found that Washington's Latinx youth are "at least 50% more likely to be held in a placement [facility] as are white youth."[230] Ultimately, the state's "Hispanic/Latino population is reported at 13% and prisons report a Hispanic population of 15.45%."[231] Therefore, Latinos' rate of incarceration is currently higher than their population.

Based on the findings of the 2021 "Race and Washington's Criminal Justice System" report, it is evident that Latinos bear the impacts of unequal policing. Latinos in Washington are 1.3 times more likely to be killed by law enforcement than whites. These numbers are even starker in Benton and Franklin Counties where Latinos are 1.9 times more likely to be killed by law enforcement and in Yakima County where Latinos are 2.5 times more likely to be killed by law enforcement.[232] This reality influences the community to challenge police brutality. For instance, in 2015, Antonio Zambrano-Montes was fatally shot by Pasco police for attempting to throw a rock at an officer, sparking "waves of protests" in the city.[233] The three officers involved in Zambrano-Montes' death would only be interviewed by investigators almost three months after the shooting.[234]

The socio-demographic disparities among Latino and white residents in education, housing, employment and socioeconomic status, health, and criminal justice are a direct result of a long history of racial discrimination that hinder this community from effectively participating in the electoral process. In Yakima County, the Latino voter registration and turnout rates are significantly lower than for whites (see Table 2, page 44). And in the state, the November 2016

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[230] Josh Rovner, "Latinx Disparities in Youth Incarceration," The Sentencing Project, July 15, 2021, https://www.sentencingproject.org/publications/latino-disparities-youth-incarceration/.
[231] Race and the Criminal Justice System, Task Force 2.0, "Race and Washington's Criminal Justice System: 2021 Report to the Washington Supreme Court," M-6.
[232] *Id.* at A-3.
[233] "Pasco police officers who shot Antonio Zambrano-Montes not questioned for months," The Guardian News, July 1, 2015, https://www.theguardian.com/us-news/2015/jul/02/pasco-police-officers-who-shot-antonio-zambrano-montes-not-questioned-for-months.
[234] *Id.*

and 2020 elections show that Latino voter registration and turnout percentages were well below whites (see Table 3, page 44).

Senate Factor 6: Use of Overt or Subtle Racial Appeals in Political Campaigns

In the Yakima Valley and Pasco region, candidates and elected government officials have made both overt and subtle racial appeals. Below are some examples of direct and indirect racial appeals.[235]

Ahead of the November 2021 elections in Franklin County, Commissioner Rocky Mullen, in a discussion about Latino voting issues, stated that apparently "non-citizens are voting in elections."[236] Mullen also declared that he was against redrawing the county's boundaries because, "I don't want to disenfranchise anyone in North Franklin County."[237] In these statements, Mullen was putting forth a myth that "non-citizens" were participating in elections and that by modifying the district boundaries, these voters would ostensibly disenfranchise white voters in the county.

In another racial appeal that non-citizens were allegedly voting, in 2016, Ron Anderson, candidate for the Board of Yakima County Commissioners, shared a post on his publicly-accessible Facebook page claiming that "illegals" were stealing our elections.[238] The post included an article titled, "Napolitano: California To Allow Illegal Immigrants to Vote for the Next President," with a caption reading, "Illegals being seduced into America by Democrats to Steal our Election. Act of Treason, Arrest all involved!"

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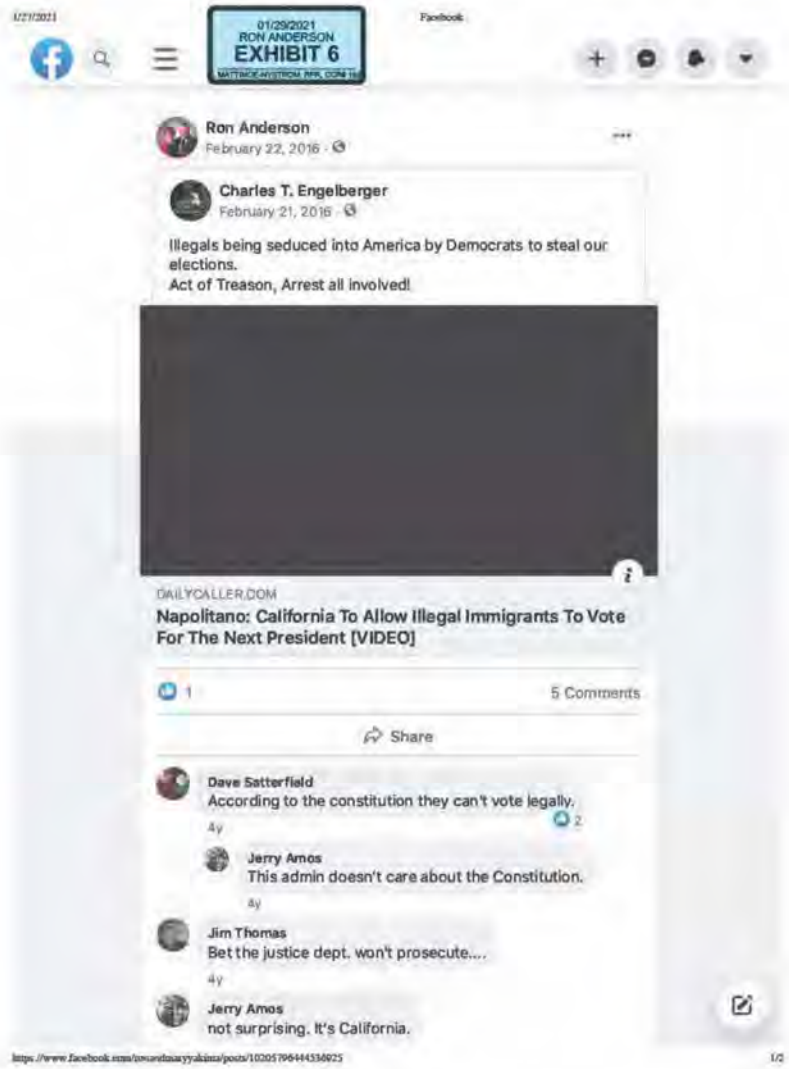
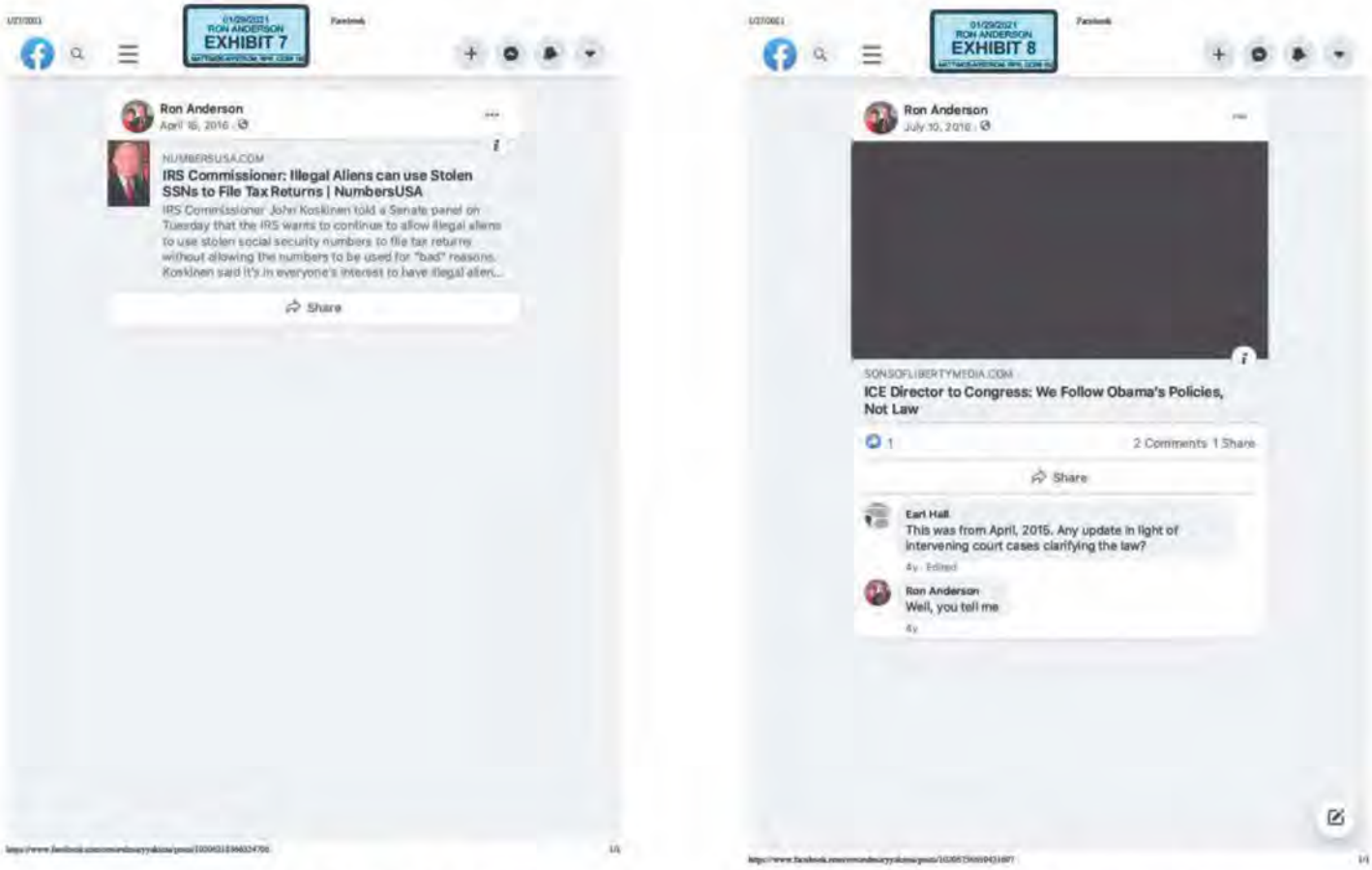
[235] On racial appeals, see Ian Haney-López, *Dog Whistle Politics: How Coded Racial Appeals Have Reinvented Racism and Wrecked the Middle Class* (Oxford University Press, 2014) and L. Stephens-Dougan, *Race to the Bottom: How Racial Appeals Work in American Politics* (University of Chicago Press, 2020).
[236] Franklin County Commission Meetings, September 21, 2021, 1:17:00.
[237] Franklin County Commission Meetings, September 21, 2021, 3:03:00-3:07.
[238] Exhibit 6 to the Deposition of Ron Anderson, *Aguilar et al. v. Yakima County et al.*, No. 20-2-0018019, Superior Court of Washington for Kittitas County, 2020.



Also in 2016, Ron Anderson shared an article with the headline "IRS Commissioner: Illegal Aliens can use Stolen SSNs to File Tax Returns"[239] and another article with the headline "ICE Director to Congress: We Follow Obama's Policies, Not Law."[240] These articles were shared from February 2016 to July 2016, when Ron Anderson was engaged in a campaign against Debra Manjarrez, a candidate with a Spanish surname.

[239] Exhibit 7 to the Deposition of Ron Anderson, *Aguilar et al. v. Yakima County et al.*, No. 20-2-0018019, Superior Court of Washington for Kittitas County, 2020.
[240] Exhibit 8 to the Deposition of Ron Anderson, *Aguilar et al. v. Yakima County et al.*, No. 20-2-0018019, Superior Court of Washington for Kittitas County, 2020.



"Illegals" and "illegal aliens" are derogatory terms used to refer to undocumented immigrants and are frequently levied as slurs against Latinos regardless of knowledge of their immigration status. Anderson would go on to defeat Debra Manjarrez in very close election. In the 2016 November General Election, Manjarrez received 32,146 votes while Anderson received 34,521.[241]

And in 2014, Franklin County Commissioner Clint Didier campaigned for Congress and released a video that said, "hundreds of illegals have already crossed our porous borders from a multitude of countries including many associated with Jihad and terrorism."[242] In 2010, as he

[241] See, General and Special Elections in Yakima County, November 8, 2016, General Election, "Election Results 1974-current," Yakima County Webpage, https://www.yakimacounty.us/DocumentCenter/View/30743/2016-General-Election-Results?bidId=.

[242] "Clint Didier for Congress Release Video on Borders and Illegal Immigration," Cision PR Newswire, October 6, 2014, https://www.prnewswire.com/news-releases/clint-didier-for-congress-releases-video-on-borders--illegal-immigration-278317771.html.

campaigned for the U.S. Senate, Didier also stated that "the country should stop giving citizenship to the children of illegal immigrants even if they're born here."[243]

While investigations have unearthed virtually no evidence of "non-citizens" voting, the rhetoric has proven costly to Latino candidates and voters in Washington State.[244] By using racist terms like "illegals" and spreading the disproven allegation that there is widespread voting by non-citizens in American elections, elected officials and candidates embrace and perpetuate a message that "denies Latino voters the presumed legitimacy other citizens enjoy, creates an unwelcoming climate, and discredits" their participation in electoral politics.[245] They stoke fears among white voters and politicians that stigmatize and discriminate against Latino citizen voters.[246]

In Yakima County, in 2019, while then Yakima City Council candidate Dulce Gutierrez was campaigning and passing out leaflets, she was verbally disparaged by a white woman.[247] As Gutierrez "was speaking to a group of students who had volunteered" with her city council campaign, the woman shouted at her and the students, "Go back to Mexico!"[248] Other voters she interacted with questioned why they should "vote for a Mexican."[249]

Other Latino candidates in the Yakima Valley have also expressed that they have experienced racial animosity while campaigning. Susan Soto Palmer, a volunteer for Gabriel

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[243] Nina Shapiro, "Didier's Machine Politics: It's easy to be anti-immigrant when wheat farming is mechanized," *Seattle Weekly* (Seattle, WA), June 15, 2010, https://www.seattleweekly.com/news/didiers-machine-politics/.
[244] Robert Courtney Smith, "'Don't Let the Illegals Vote!': The Myths of Illegal Latino Voters and Voter Fraud in Contested Local Immigration Integration," *RSF: The Russel Sage Foundation Journal of Social Sciences* 3:4 (July 2017), 167.
[245] *Id.* at 148.
[246] *Id.*
[247] Dionne Searcey and Robert Gebeloff, "The Divide in Yakima is the Divide in America: What the changing demographics of this county look like up close," *New York Times* (New York, New York), November 19, 2019, https://www.nytimes.com/2019/11/19/us/politics/yakima-washington-racial-differences-2020-elections.html.
[248] *Id.*
[249] Affidavit of Candy Gutierrez in Support of Plaintiffs' Motion for Summary Judgement, *Aguilar et al. v. Yakima County et al.*, No. 20-2-0018019, Superior Court of Washington for Kittitas County, 2020.

Muñoz's 2014 campaign for Washington State Senate in legislative district 15, reported that a man in Union Gap told her that he was not voting for Muñoz because, in his words, "I'm racist."[250] Because of this and other experiences, when Ms. Soto Palmer was campaigning for her own 2018 race for Yakima County Board, she "had white campaign volunteers be [her] surrogates so that [she] would not fear for [her] safety" as "Latino supporters did not feel safe" in some "predominantly white towns."[251] And in 2005, Evangelina Aguilar, in her re-election campaign for the Sunnyside City council was "verbally threatened on several occasions."[252]

Elected officials have also made racial appeals between campaigns while in office. In 2015, Senator Jim Honeyford, the senator for Legislative District 15, referred to racial minorities as "colored" and "coloreds."[253] Honeyford remarked that "the poor people are most likely to commit crimes, and, uh, colored [sic] most likely to be poor."[254] Honeyford used this language in a "hearing on a bill that would require future legislation to have impact statements identifying potentially disparate consequences for minorities."[255] The term "colored" was used from the mid- to late nineteenth century in the context of Jim Crow segregation[256] It was a racial label, or stamp, signaling that African Americans were supposedly inferior.[257] African Americans have rejected the term due to its racist connotations and instead embraced new terms for their racial

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[250] Affidavit of Susan Soto Palmer in Support of Plaintiffs' Motion for Summary Judgement, *Aguilar et al. v. Yakima County et al.*, No. 20-2-0018019, Superior Court of Washington for Kittitas County, 2020.
[251] *Id.*
[252] Affidavit of Evangelina Aguilar in Support of Plaintiffs' Motion for Summary Judgement, *Aguilar et al. v. Yakima County et al.*, No. 20-2-0018019, Superior Court of Washington for Kittitas County, 2020.
[253] "Senator Honeyford sorry for calling minorities 'coloreds,'" *The Columbian*, https://www.columbian.com/news/2015/mar/06/sen-honeyford-sorry-calling-minorities-coloreds/.
[254] Ansel Herz, "Republican State Senator: Poor, 'Colored' People Are More Likely to Commit Crimes," *The Stranger*, https://www.thestranger.com/news/2015/03/02/21799665/washington-republican-poor-colored-people-are-more-likely-to-commit-crimes.
[255] *Id.*
[256] Tom W. Smith, "Changing Racial Labels: From 'Colored' to 'Negro' to 'Black' to 'African American,'" *The Public Opinion Quarterly*, 56:5 (1992), 496-514.
[257] Ibram X. Kendi, *Stamped from the Beginning: The Definitive History of Racist Ideas in America*," (New York: Bold Type Books, 2016), 1-11.

identity.[258] In using the terms "colored" and "coloreds," Honeyford employed coded language that appears racially innocuous but is loaded with racist history. While Honeyford issued an apology for using "hurtful" language, he did not apologize for the message underlying his statements.[259]

And in 2016, another elected official shared a racist image on social media.[260]

[258] Tom W. Smith, "Changing Racial Labels: From 'Colored' to 'Negro' to 'Black' to 'African American,'" *The Public Opinion Quarterly*, 56:5 (1992), 496-514.
[259] Venice Buhain, "State Sen. Jim Honeyford apologizes for 'hurtful' words on minorities," *The Seattle Globalist*, https://seattleglobalist.com/2015/03/06/jim-honeyford-apologize-hurtful-words-on-minorities/34485.
[260] Jake Dorsey, "Franklin County corner posted a 'white power' meme. Some say his apology isn't enough," *Yakima Herald-Republic* (Yakima, WA), https://www.yakimaherald.com/news/local/franklin-county-coroner-posted-a-white-power-meme-some-say-his-apology-isn-t-enough/article_3b232aa8-2871-11e8-8f6b-03319b4b7e81.html.

Franklin County Coroner, Dan Blasdel, shared a photograph (above) of a white farmer with the caption, "When is white history month?" and which included another image with a white fist, reading "100% white, 100% proud."[261]

These examples of direct and indirect racial appeals are not isolated events but have occurred over the course of many years in the Yakima Valley and Pasco region, exhibiting a pattern of racial appeals in campaigns and by elected officials.

Senate Factor 7: Extent to Which Latino Candidates Have Been Elected to Public Office in the Jurisdiction

The increase in the number of Latinos in Washington in the twenty-first century did not translate into political power. Currently in the state of Washington, there are 5 legislators with Spanish surnames, only 2 more than in 2012.[262] And only two Latinos have ever been elected to state public offices from the Central Washington region including the Yakima Valley and Pasco areas.[263]

From 1995 to 2008, Mary Skinner was the single Latina elected to office representing District 14 (which includes parts of Clark, Klickitat, Skamania, and Yakima Counties).[264] Since the end of Skinner's tenure, Latino candidates including Susan Soto Palmer (2016) and Noah Ramirez (2018) have run but were defeated by white candidates.[265] For almost 15 years, a Latino candidate has not been elected to Legislative District 14. Since 2019, Alejandro "Alex" Ybarra

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[261] *Id.*
[262] Regina Graham, "Washington state's Latinos find 'politics has not changed with population," *The Guardian*, October 7, 2012, https://www.theguardian.com/world/2012/oct/07/washington-state-latino-politics-population. Legislators with Spanish surnames: Bill Ramos (5th District), Monica Jurado Stonier (49th District), Javier Valdez (46th District), Alex Ybarra (13th District), and Rebecca Saldaña (37th Legislative District).
[263] Mai Hong, "What the fight for a Latino voting district means for Centra WA politics," *Crosscut*, April 13, 2022, https://crosscut.com/politics/2022/04/what-fight-latino-voting-district-means-central-wa-politics.
[264] *Id.*
[265] "Meet the Candidate: Susan Soto Palmer," *Yakima Herald-Republic* (Yakima, WA), October 8, 2016, and Donald W. Meyers, "Noah Ramirez, Eisenhower graduate, 19, to run against Rep. Gina McCabe," *Yakima Herald-Republic* (Yakima, WA), March 19, 2018.

has been serving as representative for Legislative District 13 (which includes parts of Lincoln, Grant, and Kittitas Counties).[266] Ybarra was first appointed in 2019, and then elected as an incumbent in 2020.[267]

In Legislative District 15 (which includes parts of Adams, Benton, Franklin, Grant, and Yakima Counties), not a single Latino candidate has been elected even though several have run to represent the district.[268] Although Latino candidates have received overwhelming support from Latino residents in Yakima County, all were defeated including Pablo Gonzalez (2012), Teodora Martinez Chavez (2014), Gabriel Muñoz (2014), and Evangelina Aguilar (2018).[269] Without political representation in the 15th district, Latinos have less chances to resolve their issues and concerns through the political process.

In county election races, Latino candidates have also struggled to get elected. For instance, in Yakima County where Latinos account for 51 percent of the population, only one Latino has ever been elected to the Board of Yakima County Commissioners, which is the three-member commission "responsible for the overall executive administration of Yakima County government."[270] The single Latino commissioner served on the board from 1998 to 2006.[271]

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[266] *Id.*
[267] Mai Hoang, "Alex Ybarra says he's reading to represent 13th District in Olympia," *Yakima Herald-Republic* (Yakima, WA), January 21, 2019, https://www.yakimaherald.com/news/local/alex-ybarra-says-hes-ready-to-represent-13th-district-in-olympia/article_5e588896-1e0d-11e9-a98a-a392a72440bd.html.
[268] Mai Hoang, "What the fight for a Latino voting district means for Central WA politics," *Crosscut*, April 13, 2022, https://crosscut.com/politics/2022/04/what-fight-latino-voting-district-means-central-wa-politics.
[269] *Id.*
[270] In 1998, Jesse Palacios was elected to the Yakima Board of Commissioners, District No. 3. See, Official Returns of the State General Election held in Yakima County, November 3, 1998, General Election, "Election results 1974-current," Yakima County Webpage, https://www.yakimacounty.us/DocumentCenter/View/30723/1998-General-Election-Results?bidId=. "Responsibilities," Board of Yakima Commissioners, Yakima County Webpage, https://www.yakimacounty.us/766/County-Commissioners-Office. For demographic data, see U.S. Census Bureau, *American Community Survey 2018 1-Year Estimates* (2019), https://data.census.gov/cedsci/.
[271] Phil Ferolito, "Latinos rally behind settlement that forces new Yakima County Commission districts in 2022 election," *Yakima Herald-Republic* (Yakima, WA), September 1, 2021.

A similar trend is evident in Franklin County where Latino voters have never been able to elect their preferred candidate to the Franklin County Board of Commissioners.[272] According to the 2020 U.S. Census, Latinos accounted for 54.1 percent of the population in Franklin County.[273] Latinos comprise 56 percent of the population in Pasco, Washington, a city in Franklin County.[274] In 2020, Ana Ruiz Peralta, a Latina woman, ran for a seat on the Franklin County Board of Commissioners. She received endorsements from a former Pasco city mayor and the current Latino mayor, Saul Martinez.[275] Peralta handily won "majority-Latino precincts" in the primary election but lost to a white candidate, Rocky Mullen, in the general race.[276] Ruiz received 12,786 votes while Mullen received 18,513 votes.[277]

An examination of state and county elections demonstrates that while Latinos are a significant percentage of the population, they enjoy limited to no representation in legislative and county positions.

Senate Factor 8: Lack of Responsiveness of Elected Officials to Needs of Latino Community

In reviewing the top legislative priorities of Washington's Latino community, there is clear evidence that state legislators representing the Yakima Valley and Pasco region have been unresponsive to the needs and priorities of the community. Legislators from districts 14, 15, and 16 have regularly voted in opposition to bills supported by Latinos. The Latino Civic Alliance

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[272] Martín Meráz García, "Political Retaliation and Intimidation in Franklin County, Washington," Expert Report Submitted on Behalf of *Plaintiffs Gabriel Portugal, et al. v. Franklin County Board of Commissioner*," October 25, 2021; and Complaint for Injunctive Relief under the Washington State Voting Rights Act, *Portugal et al. v. Franklin County et al.*, No. 21-2-50210-11, Superior Court of Washington for Franklin County, 2021.
[273] U.S. Census Bureau, QuickFacts, https://www.census.gov/quickfacts.
[274] *Id.*
[275] Cameron Probert, "COVID-19 is shaping Franklin County's open commissioner race. Meet the 4 candidates," *Tri-City Herald* (Pasco, Kennewick, Richland, WA), October 2, 2020, https://www.tri-cityherald.com/article244421062.html.
[276] Nina Shapiro, "Voting-rights battle in Washington state raised allegations of diluting Latino votes."
[277] General Elections, November 3, 2020, "Election Results," Franklin County Auditor's Office, https://results.vote.wa.gov/results/20201103/franklin/.

was founded in 2005 and its mission "is to promote advocacy and civic engagement in Washington state by encouraging social responsivity and public service through collaboration with community partners."[278] The non-profit organization sponsors an event called Latino Legislative Day, where thousands of Latinos meet with legislators to discuss issues and bills that are priorities for the community such as health care, support for small businesses, apprenticeship programs, and voting rights. Ahead of the 2022 Legislative Day in February, the Latino Civic Alliance sent a list of bills that the community supported. The bills from that list that ultimately went up for a vote are:

- SB 5597 (2021-22)—Concerning Washington's Voting Rights Act. The bill, which did not pass, would establish a protocol for individuals to recover costs for investigating voting rights violations and require certain jurisdictions to obtain preclearance to modify voting election practices.[279] The bill would protect Latinos from discriminatory voting practices.
- HB 1616 (2021-22)—Concerning the Charity Care Act. The house bill, which passed, "increases the existing income threshold for patients to receive charity care for the full amount of their charges, as well as the threshold to receive a discount on their charges."[280] The Charity Act could address health care gaps, especially for low-income Latino families.
- SB 5600 (2021-22)—Concerning the sustainability and expansion of the state registered apprenticeship programs. The senate bill, which passed, requires the

[278] "LCA's Mission, Vision, & Values," Latino Civic Alliance Webpage, https://latinocivicalliance.org/mission.
[279] "Senate Bill Report, SB 5597," Washington State Legislature, https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bill%20Reports/Senate/5597%20SBR%20WM%20OC%2022.pdf?q=20220718120639.
[280] "House Bill Report, HB 1616," Washington State Legislature, https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bill%20Reports/House/1616%20HBR%20HCW%2022.pdf?q=20220718122117.

Washington State Apprenticeship and Apprenticeship Council to develop and review new programs which are sustainable and help graduates earn "a living wage."[281] Apprenticeship programs could help to reduce Latinos' unemployment rates in the state.

- HB 1746 (2021-22)—Updating the 2015 report and recommendations for supporting student success through measuring and mitigating community risk and protective predictors since the emergence of the COVID-19 pandemic. The house bill, which did not pass, would create reports summarizing the "educational services and supports offered since the beginning of the COVID-19 pandemic" including the impact of social-emotional learning.[282] The bill could produce data on how COVID-19 affected Latinos student and offer guidance on how to close the equity gap in education.
- HB 1736 (2021-22)—Establishing a state student loan program. The bill, which passed, establishes a student loan program "with 1 percent interest rates" to undergraduates in need of financial assistance and certain "high-demand graduate programs."[283] The law could reduce the financial barriers for Latino students to pursue a higher education.
- SB 5122 (2021-22)—Concerning the jurisdiction of juvenile court. The bill, which did not pass, would increase the juvenile court's jurisdiction to 19 years and create the "presumed incapacity to commit a crime to children under age

[281] "Senate Bill Report, SB 5600," Washington State Legislature, https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bill%20Reports/Senate/5600%20SBR%20WM%20OC%2022.pdf?q=20220718123026.
[282] "House Bill Report, HB 1746," Washington State Legislature, https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bill%20Reports/House/1746%20HBR%20APP%2022.pdf?q=20220718123732.
[283] "House Bill Report, HB 1736," Washington State Legislature, https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bill%20Reports/House/1736%20HBR%20APP%2022.pdf?q=20220718124707.

13."[284] It would allow youth to remain in a juvenile rehabilitation center through the age of 22, and in some cases, until 23. SB 5122 could help to create a criminal system that is less racially disparate for Latino youth, and improve the system for the Latino youth in it.

- SB 5051 (2021-22)—Concerning state oversight and accountability of peace officers and corrections officers. SB 5051, which passed, will require that peace officers, reserve officers, and corrections officers undergo more rigorous background checks, and requires that "employing agencies report all separation and disciplinary matters regarding a certified officer to the CJTC (Criminal Justice Training Commission)."[285] The bill could help to reduce racial bias among peace and corrections officers, including potentially decreasing the disproportionate rate at which Latinos are pulled over compared to whites.

Legislators representing districts 14, 15, and 16 tended to vote against these bills (see Table 11). On several legislative bills, such as HB 1616, HB 1736, and SB 5051, both the senators and representatives voted in opposition to these bills. And in some cases, bills were voted upon only in the Senate and were unanimously rejected by senators representing the Yakima and Pasco areas. One such bill, SB 5597, was a proposed update to the WVRA which, according to Latina legislative leader Rebecca Saldaña, "would expand access to fair representation for underrepresented communities in Washington, including in Yakima County where Latinos make up more than half of the population."[286] Although SB 5597 had the backing

[284] "Senate Bill Report, SB 5122, Washington State Legislature, https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bill%20Reports/Senate/5122%20SBR%20HSRR%20OC%2021.pdf?q=20220718125318.
[285] "Senate Bill Report, SB 5051," Washington State Legislature, https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bill%20Reports/Senate/5051%20SBR%20WM%20OC%2021.pdf?q=20220718130355.
[286] Kate Smith, "Yakima Valley senators vote no on WA voting rights law changes," *Yakima Herald-Republic* (Yakima, WA), February 20, 2022.

of 93 organizations across 20 counties including Casa Latina, Commission on Hispanic Affairs, El Centro de la Raza, Radio KDNA, and Tri-Cities League of United Latin American Citizens, it was opposed by the senators from legislative districts 14, 15, and 16.

Table 11. Voting Record of Elected Officials on Bills Supported by Latino Leaders in Washington, 2021-2022[287]

	SB 5597 (2021-22)—Concerning Washington's Voting Rights Act. (Latinos For Bill; Bill did not pass)	HB 1616 (2021-22)—Concerning the Charity Care Act. (Latinos For Bill; Passed in Senate and House)	SB 5600 (2021-22)—Concerning the sustainability and expansion of the state registered apprenticeship programs. (Latinos For Bill; Passed in Senate and House)
Sen. Curtis King (Legislative Dist. 14)	**NAY**	**NAY**	YEA
Rep. Chris Corry (Legislative Dist. 14)	-	**NAY**	YEA
Rep. Gina Mosbrucker (Legislative Dist. 14)	-	**NAY**	YEA
Sen. Jim Honeyford (Legislative Dist. 15)	**NAY**	**NAY**	**NAY**
Rep. Bruce Chandler (Legislative Dist. 15)	-	**NAY**	YEA
Rep. Jeremie Dufault (Legislative Dist. 15)		**NAY**	**NAY**
Sen. Perry Dozier (Legislative Dist. 16)	**NAY**	**NAY**	**NAY**
Rep. Mark Klicker (Legislative Dist. 16)	-	**NAY**	YEA
Rep. Skyler Rude (Legislative Dist. 16)	-	**NAY**	YEA

[287] "Bill Information," Washington State Legislature, https://app.leg.wa.gov/billinfo/.

	HB 1746 (2021-22)—Updating the 2015 report & recommendations for supporting student success through measuring & mitigating community risk & protective predictors since the emergence of the COVID-19 pandemic. (Latinos For Bill; Bill did not pass)	HB 1736 (2021-22)—Establishing a state student loan program. (Latinos For Bill; Passed in House and Senate)	SB 5122 (2021-22)—Concerning the jurisdiction of juvenile court. (Latinos For Bill; Bill did not pass)	SB 5051 (2021-22)—Concerning state oversight and accountability of peace officers and corrections officers. (Latinos For Bill; Passed in House and Senate)
Sen. Curtis King (Legislative Dist. 14)	-	**NAY**	**NAY**	**NAY**
Rep. Chris Corry (Legislative Dist. 14)	**NAY**	**NAY**	-	**NAY**
Rep. Gina Mosbrucker (Legislative Dist. 14)	**NAY**	**NAY**	-	**NAY**
Sen. Jim Honeyford (Legislative Dist. 15)	-	**NAY**	**NAY**	**NAY**
Rep. Bruce Chandler (Legislative Dist. 15)	**NAY**	**NAY**	-	**NAY**
Rep. Jeremie Dufault (Legislative Dist. 15)	**NAY**	**NAY**	-	**NAY**
Sen. Perry Dozier (Legislative Dist. 16)	-	**NAY**	**NAY**	**NAY**
Rep. Mark Klicker (Legislative Dist. 16)	**NAY**	**NAY**	-	**NAY**
Rep. Skyler Rude (Legislative Dist. 16)	YEA	YEA	-	**NAY**

Despite attempts by the Latino community to clearly communicate their top issues and legislative priorities, elected officials have failed to support legislative bills that the Latino people in the Yakima Valley and Pasco areas support. Additionally, they have been reluctant to

sponsor bills of interest to the Latino community such as the Washington's Voting Rights Act. It is therefore evident that elected officials in districts 14, 15, and 16 are on the whole not responding to the concerns of the Latino community.

Conclusion

In this report, I have provided evidence and analysis that Latinos in the Yakima and Pasco areas are not able to fully and effectively participate in the electoral process. The historical discrimination against Latinos in Central Washington along with contemporary forms of inequalities, have limited their opportunities to exercise their voting rights.

Pursuant to 28 U.S.C. §1746, I, Josué Q. Estrada, declare that the following is true and correct.

Dr. Josué Q. Estrada
Dated: July 27, 2022

Josué Q. Estrada, Ph.D.

509-305-1489 | Josue.Estrada@gmail.com

EDUCATION

2021	**Ph.D.**, History, University of Washington, "'We Can't Be Ignored Anymore': A History of the Latinx Voting Rights Movement, 1960-1975"
2014	**M.A.**, History, University of Washington
2007	**M.A.**, American Studies, Washington State University
2005	**B.A.**, American Ethnic Studies-Chicana/o Studies, University of Washington

CURRENT POSITION

2021-Present Assistant Professor, Department of History, Central Washington University

PUBLICATIONS

Article

2017 "Democratizing Washington State's Yakima County: A History of Latino/a Voter Suppression since 1967" in *We Are Aztlan: Chicanx Histories in the Northern Borderlands,* ed. Jerry Garcia (Pullman: Washington State University Press, 2017).

Book Reviews

2022 Review of *Race and Partisanship in California Redistricting: From the 1965 Voting Rights Act to Present*, Oliver Richomne, *Journal of American Ethnic History* (accepted for publication).

2017 Review of *Of Forests and Fields: Mexican Labor in the Pacific Northwest*, Mario Jimenez Sifuentez, *Pacific Northwest Quarterly*, Vol. 105, No. 4. (2017): 199.

Online Article

2016 "Chicano Movements: A Geographic History," in *Mapping American Social Movements Through the 20th Century*, Chicano/Latino Movements, https://depts.washington.edu/moves/Chicano_geography.shtml

TEACHING EXPERIENCE

Courses Taught at Central Washington University

2021-2022 Historical Methods (HIST 302)
History of American Citizenship (HIST 450/550)
History of the Pacific Northwest (HIST 301)
Transnational History of Latinx People in the U.S. (HIST 449/559)
U.S. History since 1865 (HIST 144)

Instructor of Record

2018, 2017 The Peoples of the United States, Instructor, University of Washington
This course, of my own design, offered a survey of US history and how conquest, migration, and imperialism have shaped the American nation and its diversity.

2006-2007 Introduction to Ethnic Studies, Instructor, Washington State University
This course, of my own design, examined how the intersectionality of ethnicity, race, and gender have shaped US society.

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Teaching Assistantships

2017, 2015	Race, Gender, and Class in Latin America and the Caribbean, University of Washington
2016, 2015	History of American Citizenship, University of Washington
2016, 2015	The Peoples of the United States, University of Washington
2016	Asian American History, University of Washington
2015	The Holocaust: History and Memory, University of Washington

Adjunct Faculty

2007-2009	Department of Ethnic Studies, Yakima Community College, Yakima, Washington I taught introduction to ethnic studies courses, of my own design, which explored the central themes and concepts of the discipline using an interdisciplinary approach.

AWARDS AND FELLOWSHIPS

2022	President's Diversity Award, Central Washington University
2022	Nominated for Honor Our Professor's Excellence Award (HOPE), Central Washington University
2021	Hanauer Dissertation Scholarship, Department of History, University of Washington
2020	**Employee of the Month, Central Washington University**
2018	Outstanding Student Leader Prize, University of Washington
2018	Dissertation Scholarship, Daughters of the Pioneers of Washington
2018	Hanauer Fellowship, Department of History, University of Washington
2017	Research Grant, Washington Institute for the Study of Inequality and Race, University of Washington
2017	**Outstanding Teaching Assistant**, Department of History, University of Washington
2017	Research Award, Harry Bridges Center for Labor Studies, University of Washington
2017	Latino/a Scholars Fellowship, Graduate School, University of Washington
2017	Mangels Endowed Fellowship, Department of History, University of Washington
2016	Digital History Fellowship, Department of History, University of Washington
2015	Burke Prize for Outstanding Scholarship, Department of History, University of Washington
2015	Graduate Opportunities and Minority Achievement Program Travel Award, University of Washington
2014	Andy Studebaker Travel Award, Department of History, University of Washington
2014	Harry Bridges Center for Labor Studies Fellowship, University of Washington
2013	Graduate Opportunities and Minority Achievement Program Fellowship, University of Washington
2013	Phil and Norma Duran Alumni Spotlight Award, Washington State University
2013	Academic Fellowship, Harry Bridges Center for Labor Studies, University of Washington
2007	Graduate Student Scholarship, Pacific Northwest FOCO National Association of Chicana and Chicano Studies
2005	First Year Fellowship, Graduate School, Washington State University

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CONFERENCE PRESENTATIONS

April 2020 "A History of Latina/o Voting Rights in the Pacific Northwest"
Presented at *Sal Castro Memorial Conference on the Emerging Historiography of the Chicano Movement*, University of California, Santa Barbara, CA.

October 2019 "Citizens with Foreign Tongues: A History of Latinx Voter Suppression in Washington State"
Presented at *What Happens in the West Doesn't Stay in the West*, Western History Association, Las Vegas, NV.

October 2019 "Putting Chicanxs on the Map: A Digital Geographic History Project"
Presented at *What Happens in the West Doesn't Stay in the West*, Western History Association, Las Vegas, NV.

June 2017 "Democratizing Washington State's Yakima County: A History of Latino/a Voter Suppression since 1967"
Presented at *Scales of Struggle: Communities, Movements, and Global Connections*, Labor and Working-Class History Association, Seattle, WA.

June 2017 "Mapping the Chicano/a Movements: A History and its Geography"
Presented at *Scales of Struggle: Communities, Movements, and Global Connections*, Labor and Working-Class History Association, Seattle, WA.

March 2017 "Mapping *El Movimiento*: A Digital Geographic Project"
Presented at *Chicana/o Studies in the Era of Globalization, War and Mass Expulsions*, National Association of Chicana and Chicano Studies, Irvine, CA.

June 2016 "Al Norte! Migration From and Through Oaxaca Study Abroad Seminar"
Presented at *National Heritage Language Research Institute Conference*, Seattle, WA.

March 2015 "Migrant Student Tracking in the 21st Century"
Presented at *Migrant Education Harbor of Hope*, National Association of State Directors of Migrant Education Annual Conference, Seattle, Washington.

May 2015 "Chicanos Revolt against Literacy Tests in the Pacific Northwest"
Presented at *Fighting Inequality: Class, Race, and Power,* Labor and Working-Class History and the Working-Class Studies Associations, Washington D.C.

April 2014 "Literacy Tests, Chicano/a Political Activism, and Citizenship in Washington State"
Presented at *Citizenships in the Pacific Northwest*, Pacific Northwest History Conference, Vancouver, Washington.

April 2014 "Chicano/a Struggle for Full Citizenship and Political Representation in Washington State's Yakima County"
Presented at *Fragmented Landscapes in Chicana and Chicano Studies: Deliberation, Innovation or Extinction?*, National Association of Chicana and Chicano Studies, Salt Lake City, Utah.

November 2012 "Improving CAMP Student Writing by Promoting the Value of Instructor Office Hours"
Presented at HEP and CAMP...Creating Waves for Change, The National High School Equivalency Program/College Assistance Migrant Program Association Conference, San Padre Island, Texas.

October 2012 "Increasing Student-Faculty Interactions through Writing"
Presented at *Revitalize Your Network, Refine Your Practices, and Redesign Your Approach to Educational Access*, TRiO Northwest Association of Educational Opportunity Programs (NAEOP), Coeur d'Alene, Idaho.

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March 2012 "A Growing Chicano/a Student Population and the Future of Diversity in Washington Colleges and Universities"
Presented at *Chican@ Studies Matters: The Legacy of Chican@ Studies in Northern Aztlán*, National Association of Chicana and Chicano Studies FOCO, Washington State University, Pullman, Washington.

October 2011 "Achieving Success through Student-Faculty Interactions and Writing"
Presented at *The Future Begins with U-Meeting the Challenges, Making the Connections,* TRIO Northwest Association of Special Programs (NASP), Spokane, Washington.

April 2007 "Tejano Migration: Vámonos Pa' Washington Chicano/a Recruitment, Migration, and Settlement (1948-1959)"
Presented at *Sociocultural and Ideological Shifts: Chicano/a Migratory and Immigration Passages,* National Association of Chicana and Chicano Studies, San Jose, California.

April 2007 "Vámonos Pa'l Norte-Washington State Tejano/a and Mexicano/a Recruitment, Migration, and Settlement (1940-1960)"
Presented at *Labor and Leisure*, Pacific Northwest American Studies Association, Portland State University, Portland, Oregon.

March 2007 "From Texas to Washington State: Chicano/a Recruitment, Migration and Settlement"
Presented at *El Otro Norte: Raza, Race and Resistance in the Pacific Northwest,* Pacific Northwest FOCO National Association of Chicana and Chicano Studies, Washington State University, Pullman, Washington.

OTHER ACADEMIC EMPLOYMENT

2019-2021 Principal Investigator and Director, Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP), Central Washington University

2018-2019 Editorial Intern, Pacific Northwest Quarterly, University of Washington

2015 Assistant Director, University of Washington Study Abroad Summer Program: Al Norte! Migration from and through Oaxaca, Instituto Cultural Oaxaca, Mexico

2013-2015 Graduate Student Intern, Kelley Ethnic Cultural Center, University of Washington

2009-2013 Director, College Assistance Migrant Program, Washington State University

2007-2009 Recruiter/Enrollment Counselor, College Assistance Migrant Program, Washington State University

PUBLIC AND DIGITAL HISTORY EXPERIENCE

2016-Present Research Associate and Contributor, *Mapping American Social Movements Through the 20th Century*, University of Washington
I identified, collected, and organized data used to produce interactive maps of multiple social movements. Led the effort to create a section tracing the geography of the Chicano/a Movement, contributing to the production of over 25 maps and charts. See http://depts.washington.edu/moves/

Led the effort to collect and manage the data for the project to trace the geography of the National Association for the Advancement of Colored People (NAACP) chapters across six decades. See https://depts.washington.edu/moves/NAACP_intro.shtml

2017 'Righting' and Preserving History—a project funded by the Mangels Fellowship, University of Washington

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I designed an interactive workshop in collaboration with the Labor Archives of Washington and the Office of Minority Affairs to promote public history, and the importance of the preservation of historical records. By traveling to high schools across the state, I reached over 300 students including 200 prospective UW first-year students.

2014 Associate Editor, *Seattle Civil Rights and Labor History Project*, University of Washington
I conducted four oral interviews to create original content and edited undergraduate student essays for online publication.
See http://depts.washington.edu/civilr/

DEPARTMENT/UNIVERSITY SERVICE

Central Washington University

2021-Present Committee Member, Curriculum and Assessment, Department of History, Central Washington University
2021-Present Committee Member, Recruitment and Outreach, Department of History, Central Washington University
2021-Present Provost's Council for Diversity and Equity, Central Washington University
2021-Present Board Member, Centro for Latinx Studies, Central Washington University
2018-Present Board Member, College Assistance Migrant Program, Central Washington University
2020 Selection Chair for GEAR UP Associate Director, Central Washington University
2019 Hispanic Leadership Institute Student Scholarship Selection Committee, Central Washington University

University of Washington

2018-2020 Advisory Member, College Assistance Migrant Program, University of Washington
2017-2018 Diversity Committee, Department of History, University of Washington
2015, 2016 Reader for Competitive College Assistance Migrant Program (CAMP) Grant, Office of Migrant Education, US Department of Education

Washington State University

2009-2013 Guidance Committee Member, TRIO Student Support Services, Washington State University
2011-2013 Advisory Member, College Spark—Critical Literacies Achievement and Success Program
2011-2013 Advisory Member, College Spark—Washington State Educational Access Coalition for HB 1079 (undocumented) Students
2010-2013 Scholarship Committee, Academic Diversity Award, Washington State University
2008-2013 Planning Committee, Bilingual Orientation, Washington State University

GRANT WRITING EXPERIENCE

2021 Assisted writing the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) Grant, **Adelante GEAR UP** (in partnership with the Yakima School District), Office of Migrant Education, US Department of Education. **Grant scored 105/105 possible points. (Co-Principal Investigator and Director)**

2021 Assisted writing the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) Grant, **Pathways to Success** (in partnership with schools in the Okanogan County), Office of Migrant Education, US Department of Education. **Grant scored 105/105 possible points. (Co-Principal Investigator and Director)**

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2013	Dare to Dream Math/Science Academies, Office of Superintendent of Public Instruction Successfully awarded-$104,000. (Co-Principal Investigator)
2011, 2012	CAMP Supplemental Award, Washington Student Achievement Council Successfully awarded-$3,751 each year. (Co-Principal Investigator)
2011	Assisted writing the College Assistance Migrant Program (CAMP) Grant, Office of Migrant Education, US Department of Education. **Successfully awarded-$2.3 million (Director)**
2009	Phil and June Lightly Leadership Fund, Washington State University. Successfully awarded-$2,500 (Director)

LEADERSHIP AND CIVIC ENGAGEMENT ACTIVITIES

2022	Guest Lecture, History of Chicanxs in Washington, High School Equivalency Program (HEP), Central Washington University
2021	Co-Chair, Central Washington University, Latinx Alumni Association
2020	Invited Speaker, College Assistance Migrant Program, Central Washington University
2019	Volunteer Judge, Regional Contest-National History Day, Central Washington University
2018	Keynote Speaker, *Annual Latinx Welcome*, Central Washington University
2014-2018	Graduate Diversity Ambassador, Graduate Opportunities and Minority Achievement Program, University of Washington
2017	Invited Speaker, *Why Race Matters: Resistance and Resilience*, University of Washington
2016	Keynote Speaker, The Pacific Northwest College Assistance Migrant Program Consortium Conference
2012-2013	Advisor, Gamma Iota Omicron (GIO), Washington State University
2012	Keynote Speaker, Na-ha-shnee: Native American Health Science Camp, Washington State University
2009, 2012	Facilitator, Secondary Education for Migrant Youth (SEMY) State Leadership Conference
2008-2009	Mentor, Hometown College Success Foundation, Mabton High School
2008	Mentor, National Hispanic Institute Leaders Conference, Washington State University

MEDIA COVERAGE

2021	"Uncounted: The History and Impact of Voter Suppression," Humanities Washington, https://www.humanities.org/wp-content/uploads/2021/05/HW_Spark_Issue2_2021_LO.pdf
2021	"Ballot Blocked Episode 5: Mexican American Voting Rights," National Park Service https://www.nps.gov/articles/000/ballot-blocked-episode-5.htm
2017	"Labor Archives: To be an Academic," University of Washington TV, www.uwtv.org/series/laborarchives/watch/H1m-nAwuauE/

LANGUAGES

Heritage Spanish Speaker

PROFESSIONAL MEMBERSHIPS/AFFILIATIONS

The National Association of Chicana and Chicano Studies
The Western History Association
The Labor and Working-Class History Association

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COMPUTER SKILLS

Learning Management System (Canvas)
Office suite (Microsoft Office)
Presentation software (PowerPoint, Prezi, Keynote)
Communication and collaboration tools (Zoom, Skype, Teams)
Data visualization (Tableau)

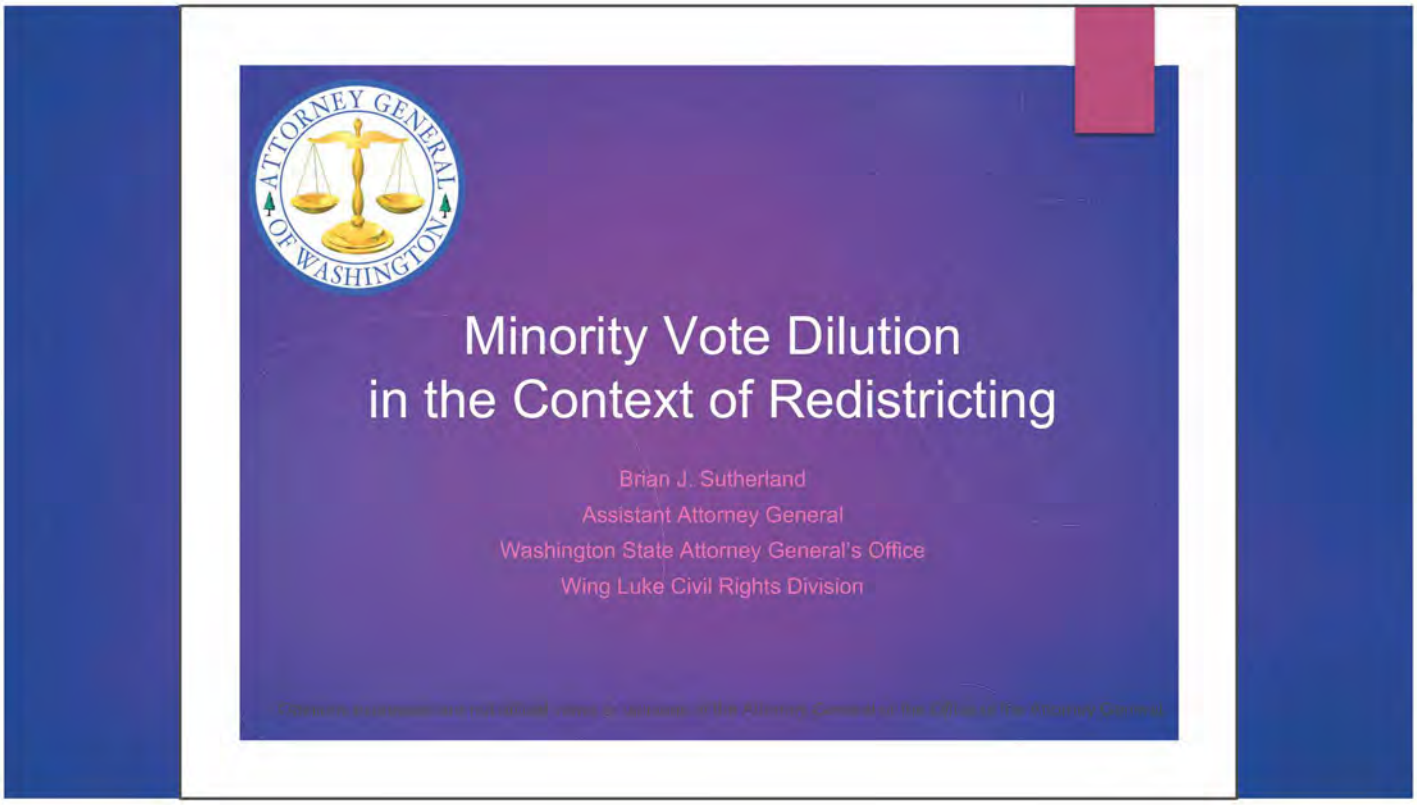
12-14-2022
Paul Graves
EXHIBIT 10
Jeannie Gerstep, CCR, CCR #2911

PLAINTIFF'S
EXHIBIT
139

PLAINTIFF'S EXHIBIT 139

PLAINTIFF'S EXHIBIT 139

PLAINTIFF'S EXHIBIT 139


Minority Vote Dilution
in the Context of Redistricting
Brian J. Sutherland
Assistant Attorney General
Washington State Attorney General's Office
Wing Luke Civil Rights Division

Section 2 of the Voting Rights Act of 1965

52 U.S.C. § 10301:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or [membership in a language minority group];

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

The United States Constitution

The Fourteenth Amendment: "No State shall … deny to any person within its jurisdiction the equal protection of the laws."

The Fifteenth Amendment: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

- Claims for vote dilution under the Constitution are rare because the Constitution requires proof of intent to discriminate while Section 2 of the Voting Rights Act does not
- But Constitutional considerations arise in redistricting because "racial gerrymanders," or redistricting plans unexplainable as anything other than an attempt to segregate voters by race, are unconstitutional

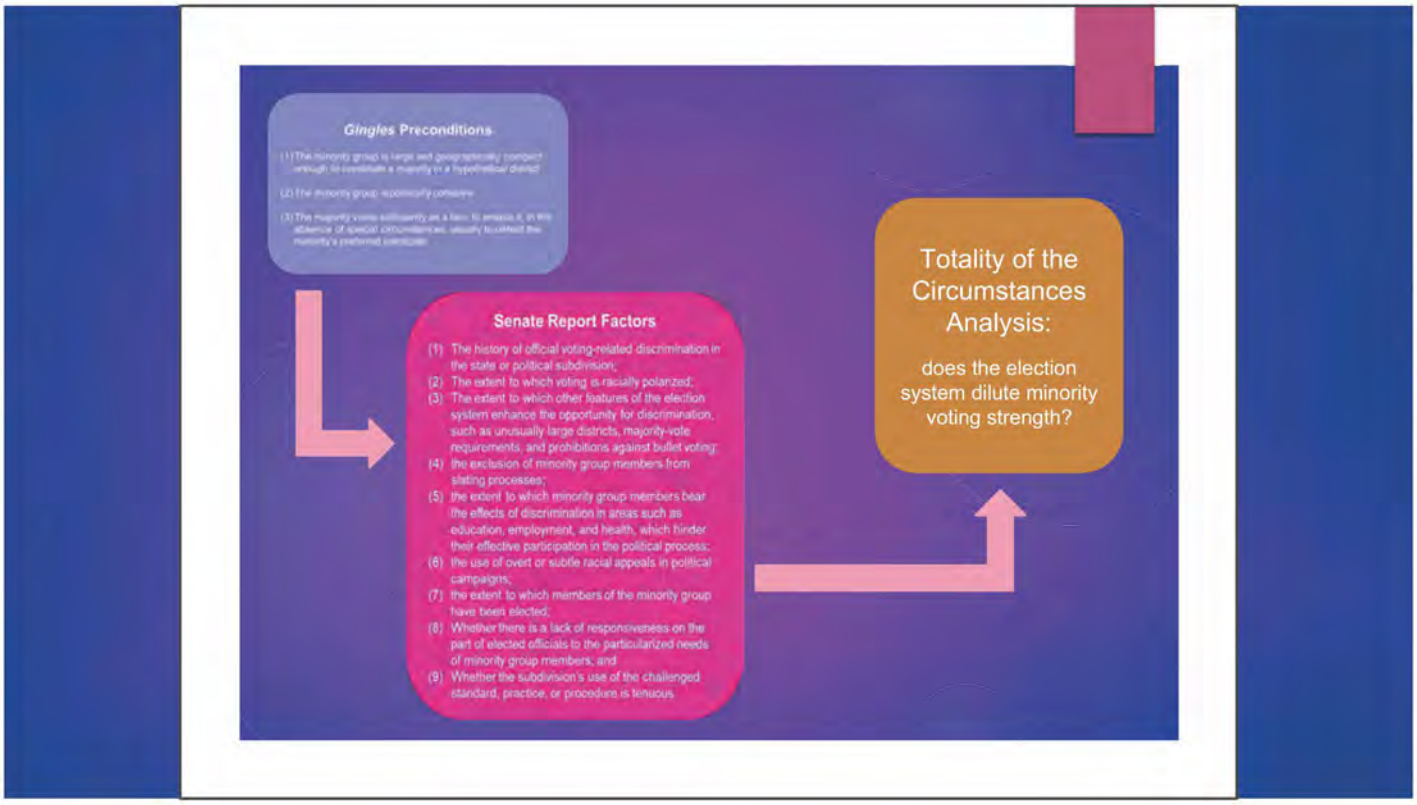
Section 2 of the Voting Rights Act of 1965

"The 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 black and white voters to elect their preferred representatives."

Thornburg v. Gingles, 478 U.S. 30, 47 (1985) (quotation and citations omitted).

Section 2 of the Voting Rights Act

- ***Thornburg v. Gingles* (1985)**
  - Landmark case that defined "vote dilution" for purposes of Section 2 after the 1982 amendments to the Voting Rights Act
  - Sets forth the framework for proving vote dilution, including the three "*Gingles* Preconditions," the "Senate Report Factors," and how courts should weigh the "totality of the circumstances"
  - Subsequent cases have established important rules and guideposts for determining whether an election system causes minority vote dilution and have refined the analysis in various ways


Gingles Preconditions
(1) The minority group is large and geographically compact enough to constitute a majority in a hypothetical district
(2) The minority group is politically cohesive
(3) The majority votes sufficiently as a bloc to enable it, in the absence of special circumstances, usually to defeat the minority's preferred candidate
Senate Report Factors
(1) The history of official voting-related discrimination in the state or political subdivision;
(2) The extent to which voting is racially polarized;
(3) The extent to which other features of the election system enhance the opportunity for discrimination, such as unusually large districts, majority-vote requirements, and prohibitions against bullet voting;
(4) the exclusion of minority group members from slating processes;
(5) the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their effective participation in the political process;
(6) the use of overt or subtle racial appeals in political campaigns;
(7) the extent to which members of the minority group have been elected;
(8) Whether there is a lack of responsiveness on the part of elected officials to the particularized needs of minority group members; and
(9) Whether the subdivision's use of the challenged standard, practice, or procedure is tenuous.
Totality of the Circumstances Analysis:
does the election system dilute minority voting strength?

Gingles Preconditions

(1) The minority group is large and geographically compact enough to constitute a majority in a hypothetical district

(2) The minority group is politically cohesive

(3) The majority votes sufficiently as a bloc to enable it, in the absence of special circumstances, usually to defeat the minority's preferred candidate

Racially Polarized Voting

The *Gingles* District

- Requirements
  - The minority population must be sufficiently large and "geographically compact" that it can form a majority in a possible or hypothetical district
  - Necessary to show that vote dilution, rather than the dispersal of the minority community, is responsible for minority electoral loss
  - There is no precise rule for compactness, but it must take into account traditional redistricting principles such as maintaining communities of interest, traditional boundaries, population equality, contiguity, respect for political subdivisions, incumbency protection, and preservation of pre-existing majority-minority districts

Evidence of the *Gingles* District

- Demographics Data
  - To determine who lives in current and proposed districts, demographers use accepted data sources like
    - The American Community Survey from the U.S. Census Bureau
    - Voter registration by race in states that keep this information;
    - Surname analysis
  - Demographics at the precinct level must often be estimated, and so experts can disagree about whether minority voters actually constitute a majority in a proposed district
  - Demographers use specialized software to draw illustrative maps and proposed redistricting plans

Racially Polarized Voting:
Minority Political Cohesion and Majority Bloc Voting

- **Minority Political Cohesion**
  - Evidence, both statistical and non-statistical, that a significant number of minority group members usually vote for the same candidates
  - Courts look to whether there is a "minority preferred candidate" and the percentage of voters who support that candidate
- **Majority Bloc Voting**
  - Evidence, both statistical and non-statistical, that the majority votes sufficiently as a bloc (a significant number of majority voters vote for the same candidates) to enable the majority, in the absence of special circumstances, usually to defeat the minority's preferred candidate
  - Special circumstances might be a minority candidate running unopposed, multiple majority candidates running and splitting the vote, or other situations

Evidence of Racially Polarized Voting

- **Statistical Evidence**
  - Racially polarized voting is assessed by experts with education and training in statistical methodologies and experience using software to perform these analyses, which include correlations, homogenous precinct analyses, ecological regression, and ecological inference
  - These analyses obtaining demographic data for each precinct and the official election returns, and then an expert can correlate minority voter concentration in particular areas with support for particular candidates and determine the statistical relationship between the two
- **Non-Statistical Evidence**
  - Racially polarized voting may also be evidenced by the testimony of individuals involved in local elections, such as candidates, campaigns, community organizations who are politically active, and individual voters

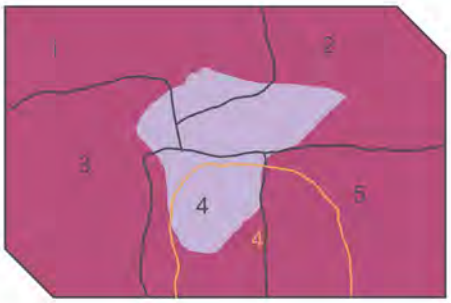
Types of Vote Dilution: Stacking

Placing a large majority population into a district with a larger majority population to prevent the minority population from constituting a majority in the district

Majority voters

Minority voters

New District 4



Types of Vote Dilution: Packing

Over-concentrating minority voters in one district such that they cannot form an effective majority in any other districts

Majority voters

Minority voters

Types of Vote Dilution: Cracking

Fragmenting the minority community throughout multiple districts so that it cannot constitute an effective majority in any one district

Majority voters

Minority voters

Racial Gerrymanders

- ***Shaw v. Reno*, 509 U.S. 630, 644 (1993)**: "[R]edistricting legislation that is so bizarre on its face that it is 'unexplainable on grounds other than race,' demand the same close scrutiny that [courts] give other state laws that classify citizens by race."
- ***Miller v. Johnson*, 515 U.S. 900 (1995)**:
  - *Shaw* recognized a racial gerrymandering claim under the Fourteenth Amendment that is "analytically distinct" from vote dilution
  - But it is not the shape of the district that must be "bizarre," and this is not required to prevail on a racial gerrymandering claim
  - Rather, it may combine with other evidence to show that race was the "predominant motivating factor" in drawing a district
- ***Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254 (2015):**
  - Using race as the predominant factor to draw districts cannot be justified unless there is "strong basis in evidence to use racial classifications in order to comply with a statute when they have good reasons to believe such use is required" and it actually remedies the violation

A few other important notes…

- ***Bartlett v. Strickland*, 556 U.S. 1 (2009):** "Crossover districts," or districts in which minority voters are not a numerical majority but can elect candidates of their choice with the "crossover" votes of some majority voters, do not satisfy the requirements for a *Gingles* district, but may be preserved during redistricting for other reasons
- "[N]othing in [Section 2] establishes a right to have members of a protected class elected in numbers equal to their proportion in the population," 50 U.S.C. §10301(b), but a relevant consideration in the totality of the circumstances 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," ***League of United Latin Amer. Citizens v. Perry*, 548 U.S. 399 (2006)**

A few other important notes… (continued)

- The **Washington Voting Rights Act**, RCW 29A.92, also prohibits the imposition of a method of election that "impairs the ability of members of a protected class or classes to have an equal opportunity to elect candidates of their choice as a result of the dilution or abridgment of the rights of voters who are members of a protected class or classes."

- **However**, it only to methods of election for a "political subdivision," defined as "any county, city, town, school district, fire protection district, port district, or public utility district, but does not include the State."

Senate Report Factors

(1) The history of official voting-related discrimination in the state or political subdivision;
(2) The extent to which voting is racially polarized;
(3) The extent to which other features of the election system enhance the opportunity for discrimination, such as unusually large districts, majority-vote requirements, and prohibitions against bullet voting;
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(6) the use of overt or subtle racial appeals in political campaigns;
(7) the extent to which members of the minority group have been elected;
(8) Whether there is a lack of responsiveness on the part of elected officials to the particularized needs of minority group members; and
(9) Whether the subdivision's use of the challenged standard, practice, or procedure is tenuous

Considerations for Redistricting

1. **Proof of Vote Dilution?** Vote dilution is a complex determination made by judges after considering "the totality of the circumstances," including statistical evidence of racially polarized voting, demographic data and possible redistricting plans, and other factors like the history of minority electoral defeats and other barriers to equal participation.
2. **Demographic Changes.** Significant changes in the demographic makeup of legislative districts are one big reason why the question of possible vote dilution arises.
3. **Avoiding racial gerrymanders.** Race must not be the "predominant motivating factor" in drawing districts, although the preservation of crossover districts or avoiding vote dilution or other discrimination may be appropriate.

QUESTIONS?

October 15, 2021

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

Dr. Matt Barreto, UCLA Political Science & Chicana/o Studies
Faculty Director of the UCLA Voting Rights Project
matt@uclavrp.org 909.489.2955

PLAINTIFF'S EXHIBIT 178

Current Landscape in Washington

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

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

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

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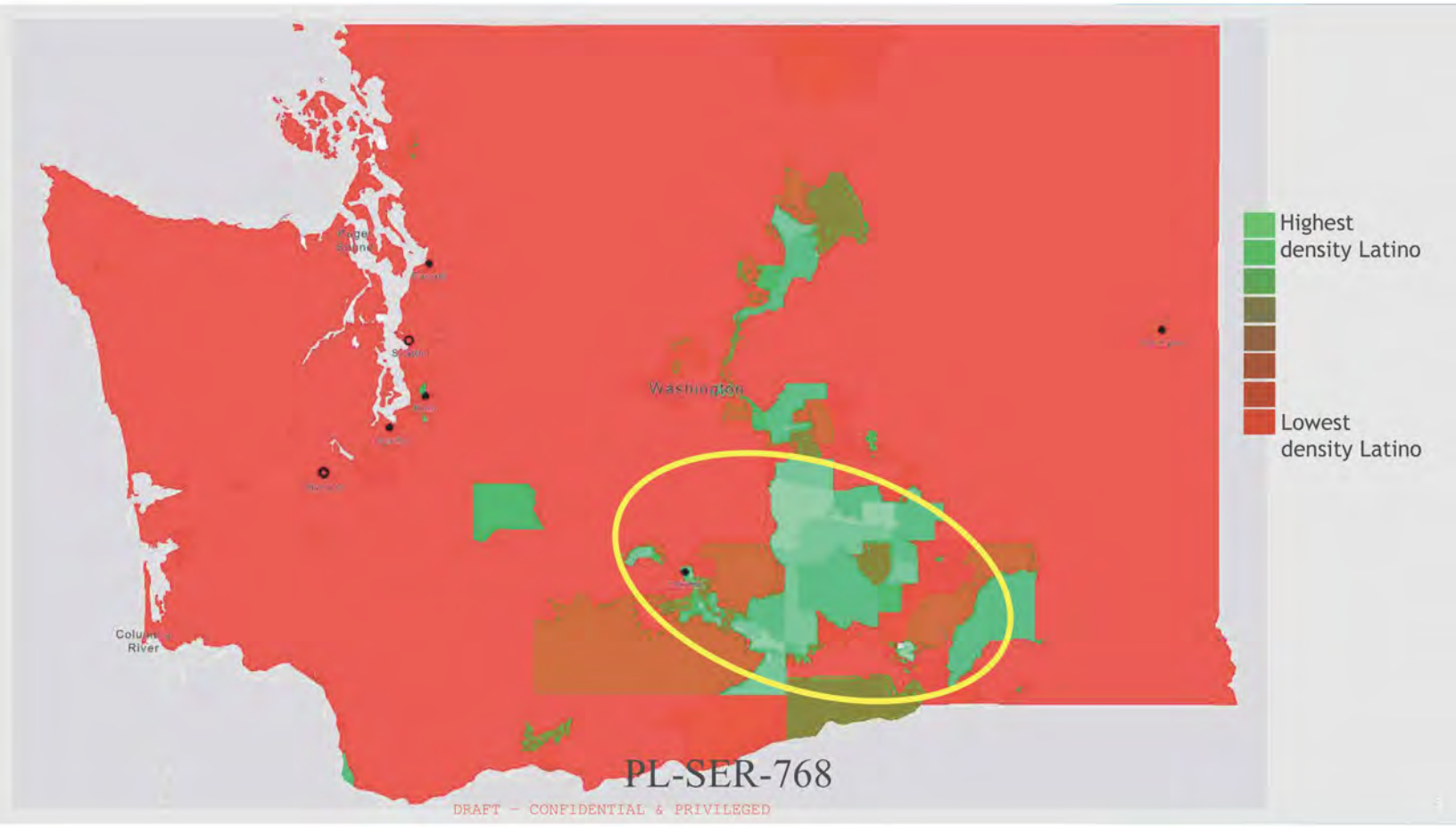

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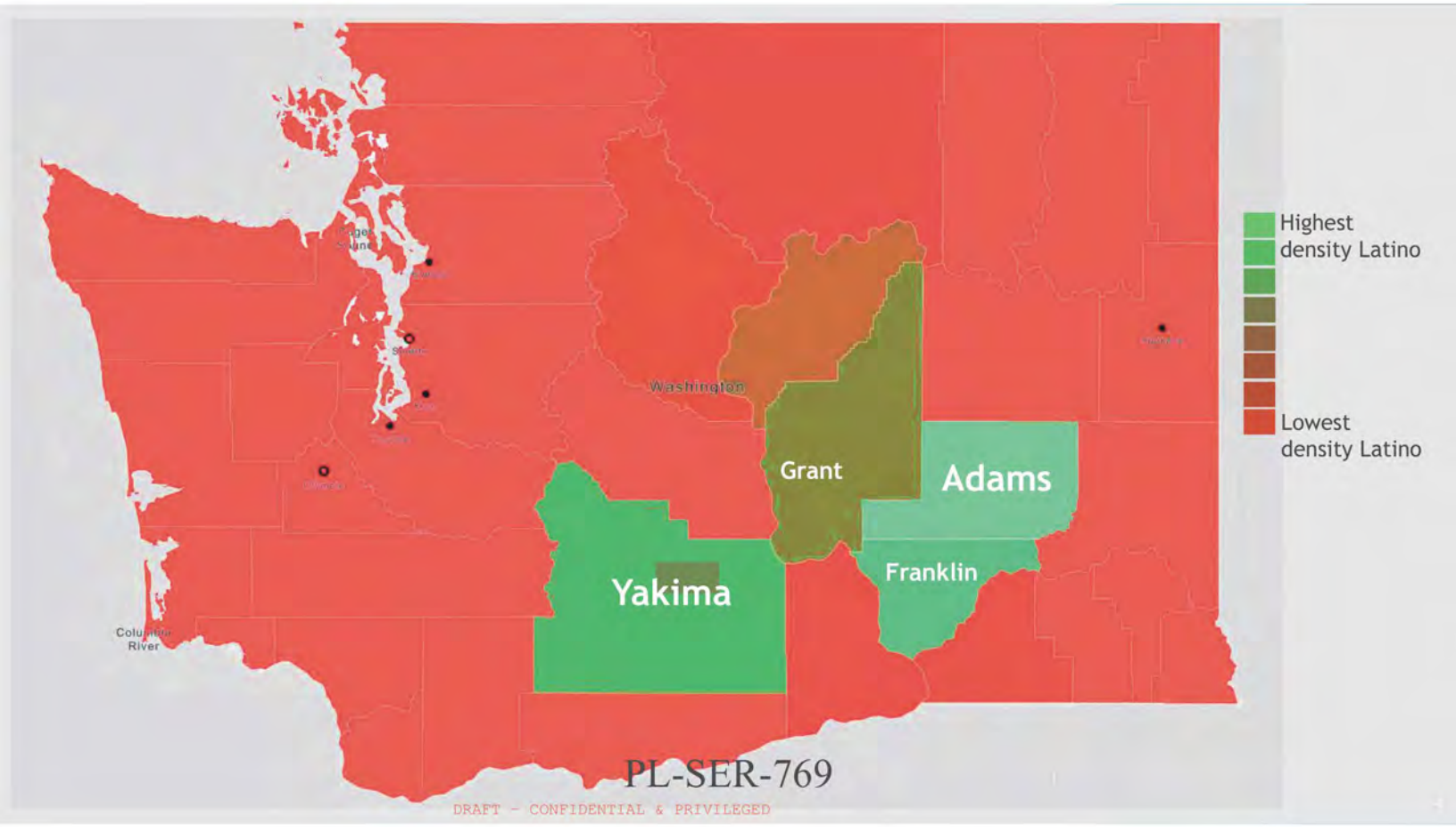

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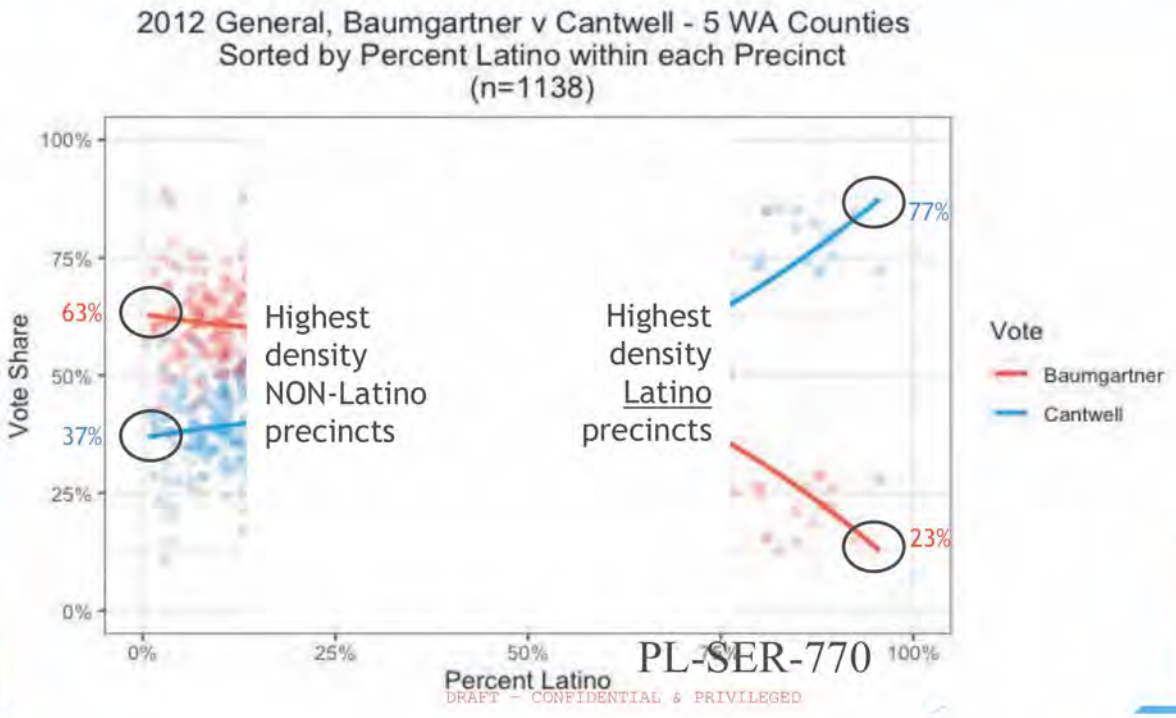
Measuring Racially Polarized Voting



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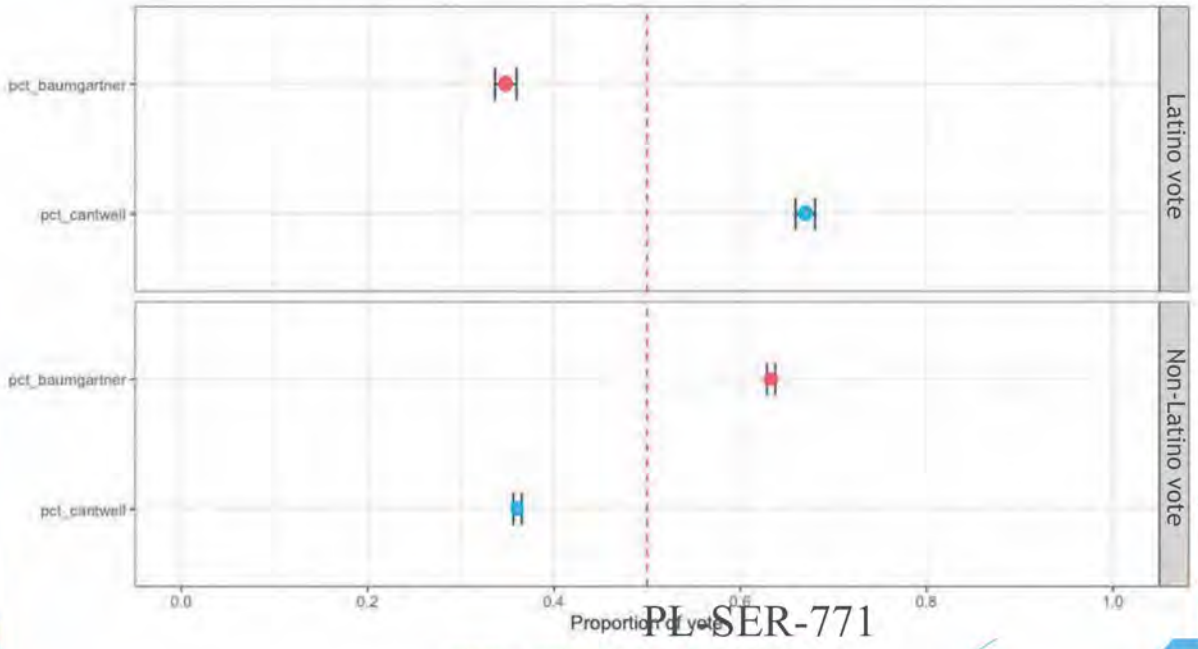
Measuring Racially Polarized Voting

2012 General, Baumgartner v. Cantwell - 5 WA Counties



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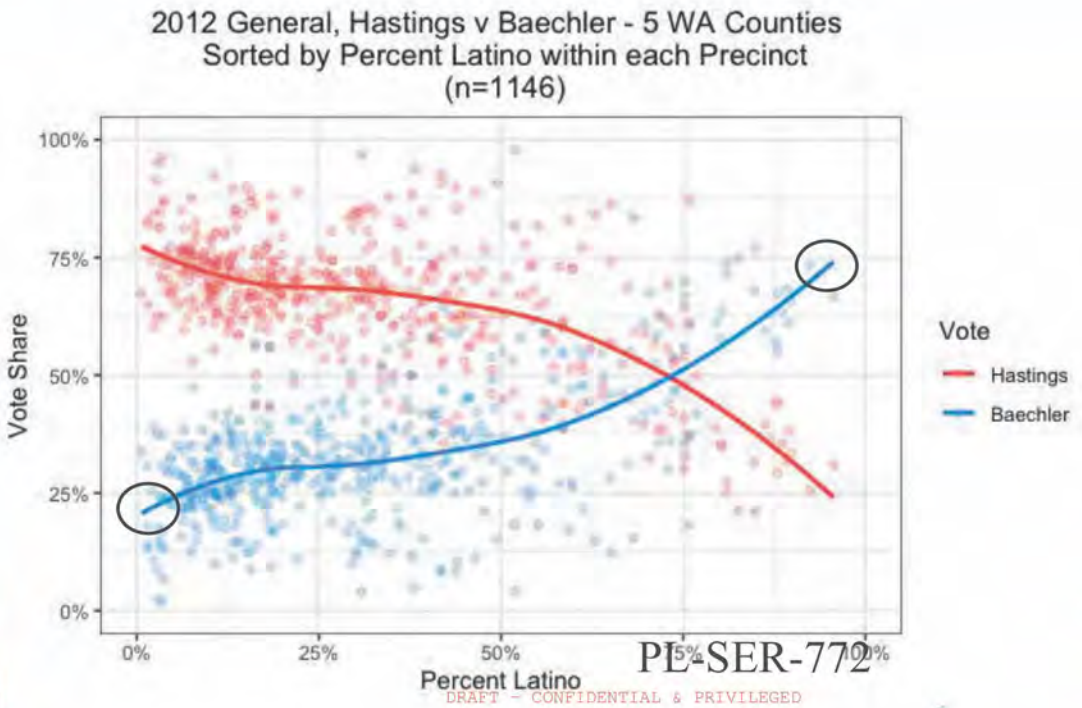
Voting Patterns in Yakima Valley Region: 2012



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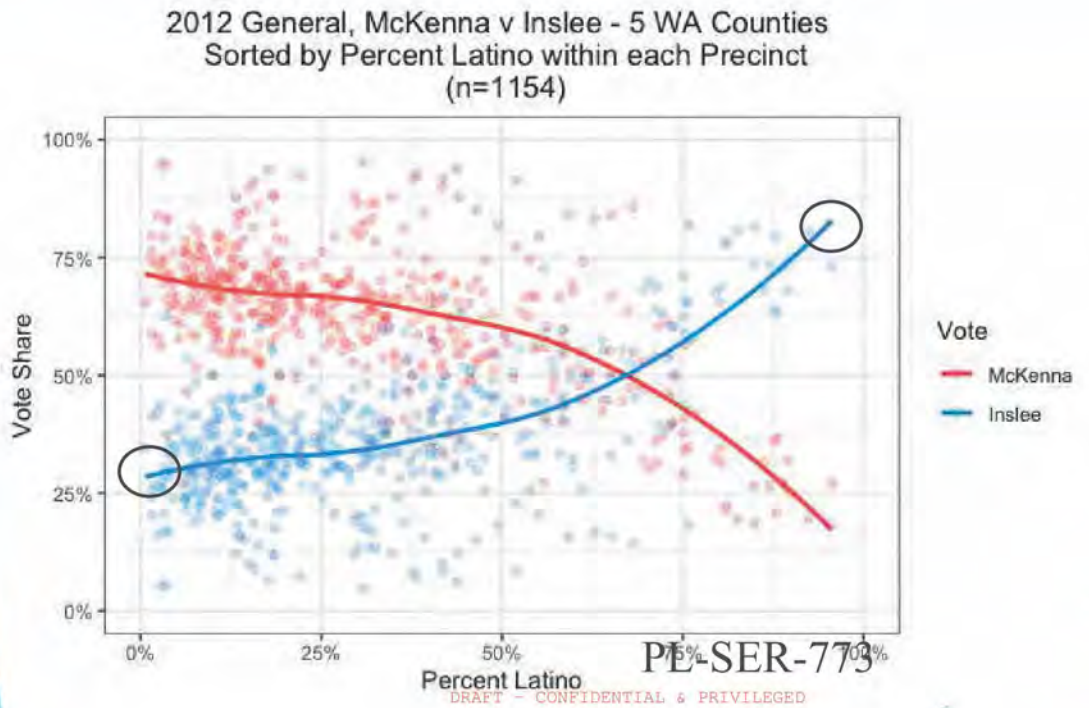
Voting Patterns in Yakima Valley Region: 2012



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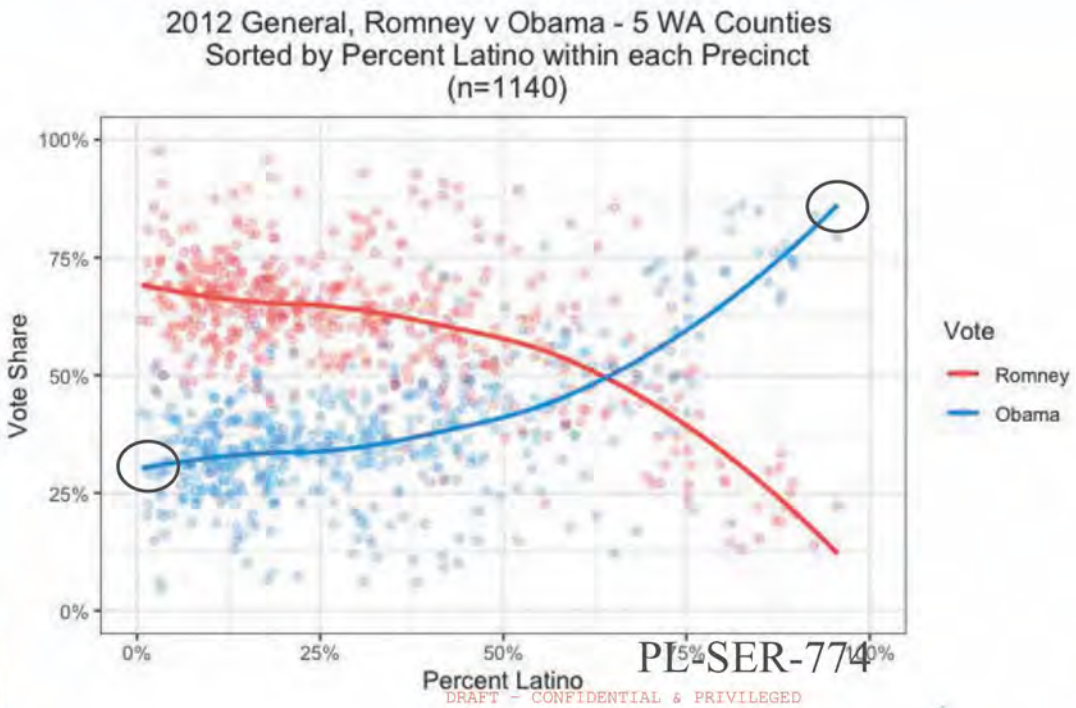

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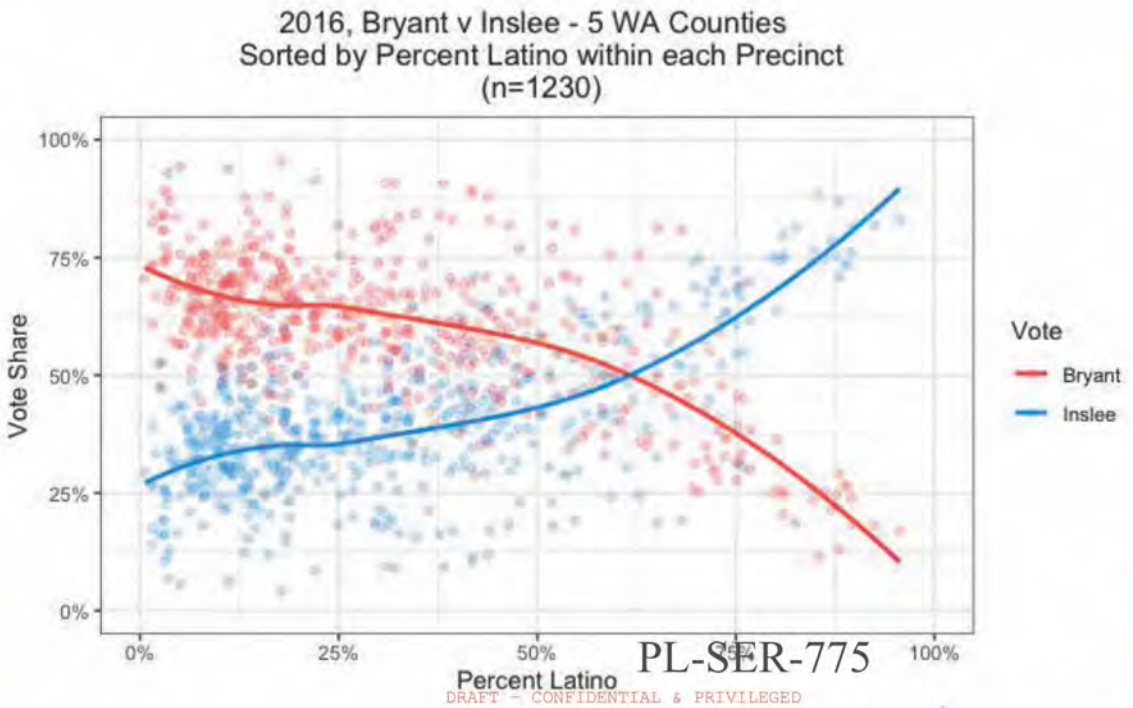
Voting Patterns in Yakima Valley Region: 2016



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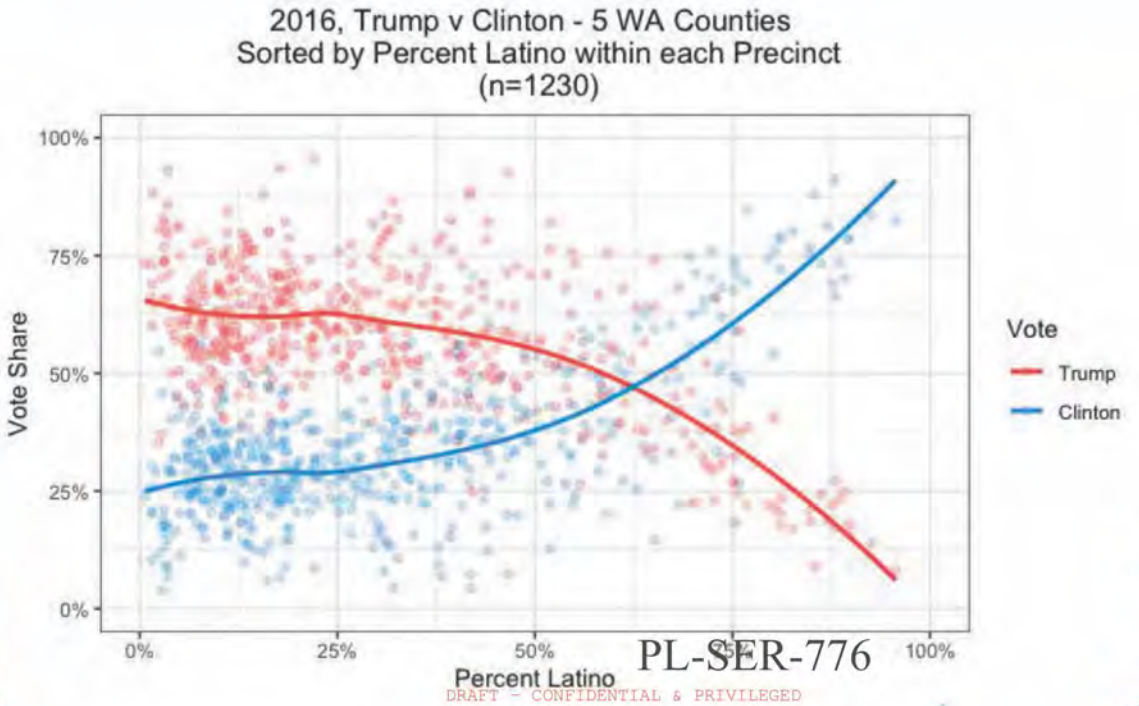
Voting Patterns in Yakima Valley Region: 2016



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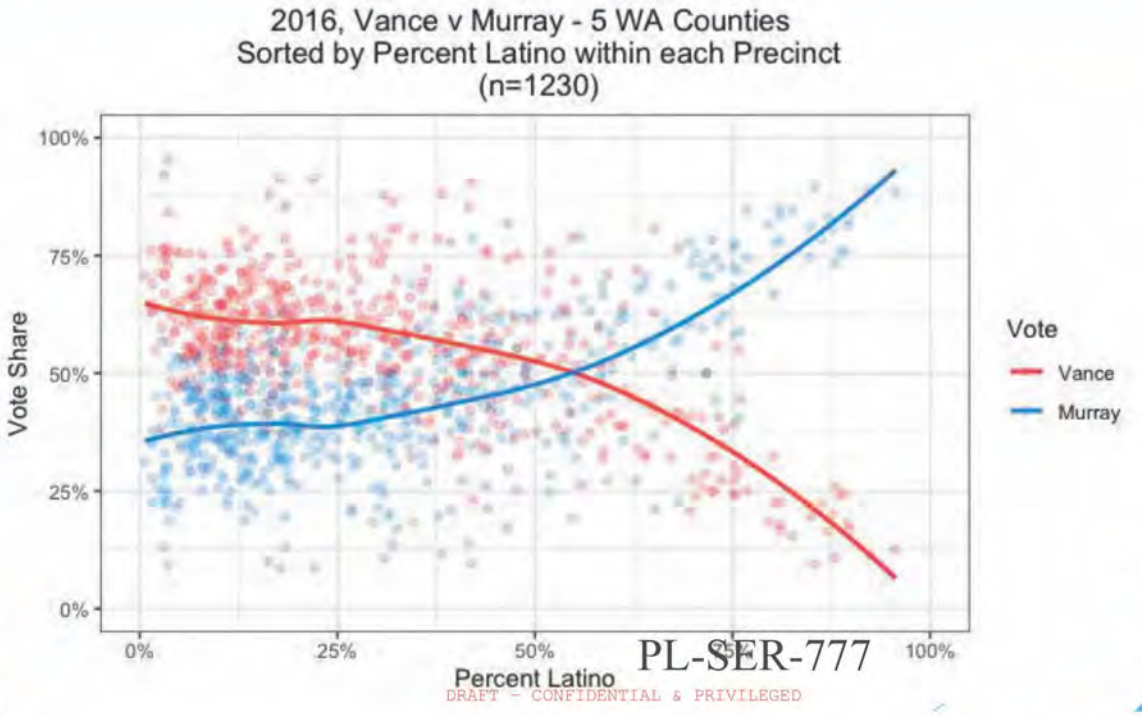
Voting Patterns in Yakima Valley Region: 2016



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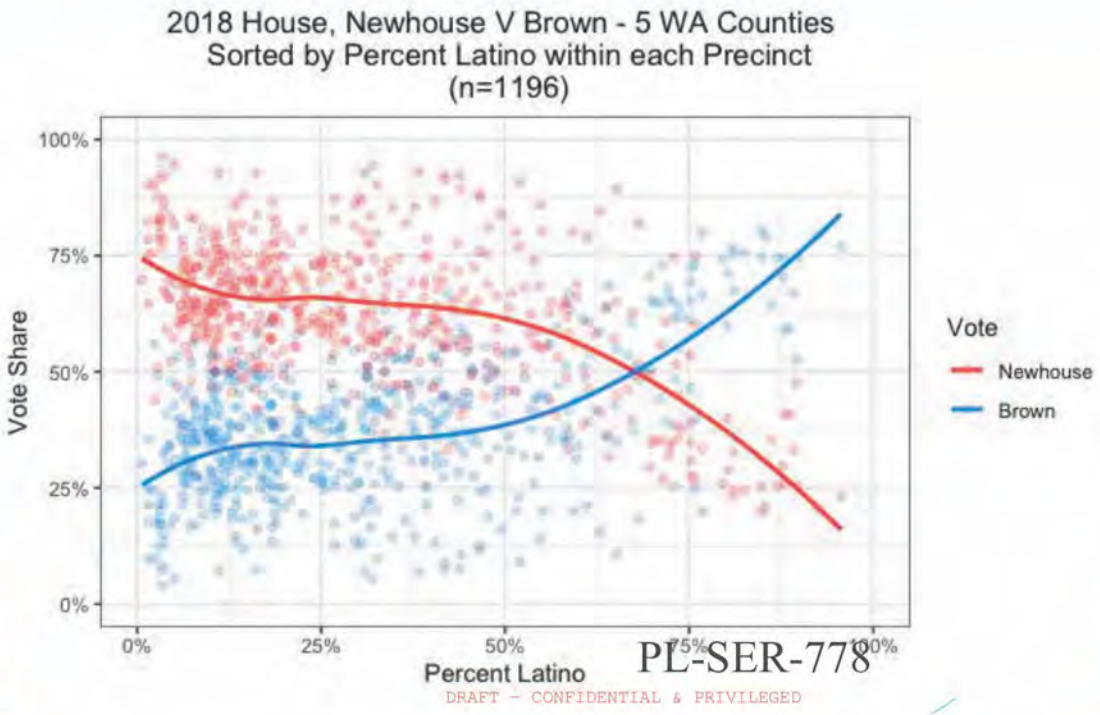
Voting Patterns in Yakima Valley Region: 2018



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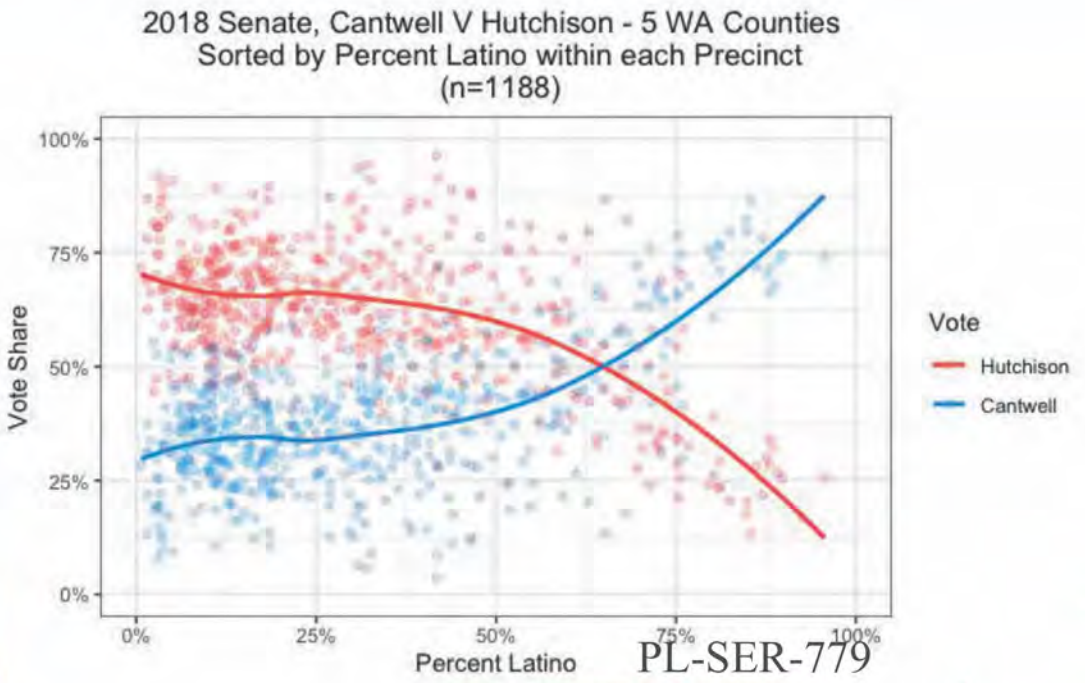
Voting Patterns in Yakima Valley Region: 2018



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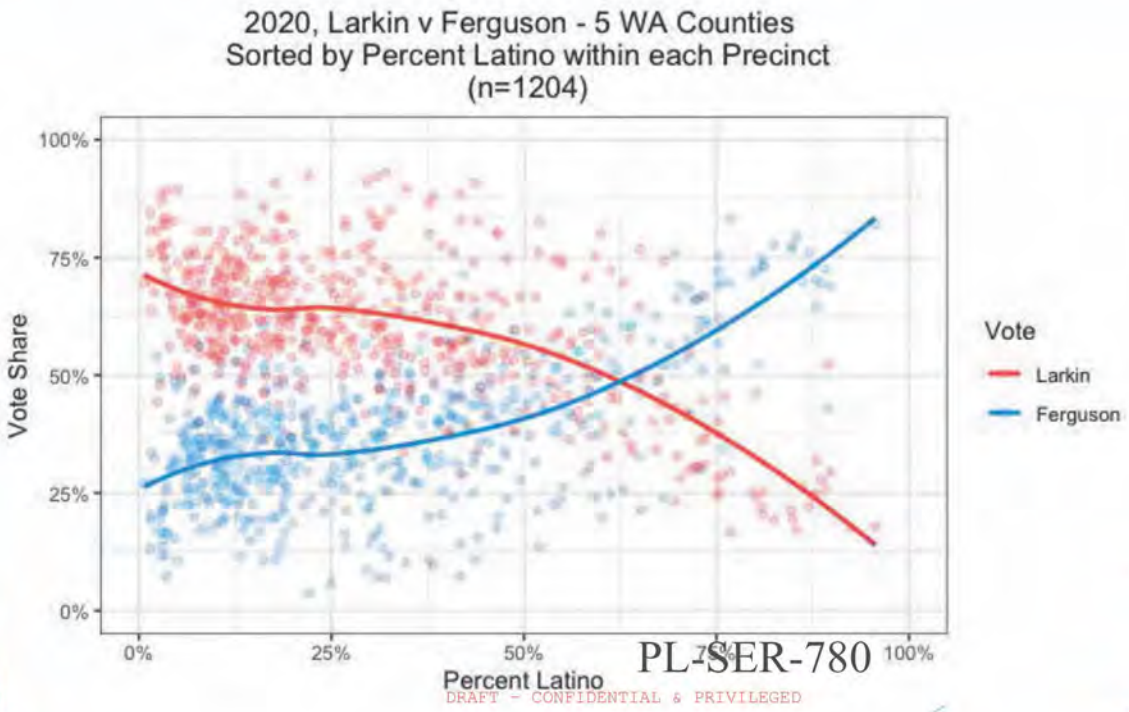
Voting Patterns in Yakima Valley Region: 2020



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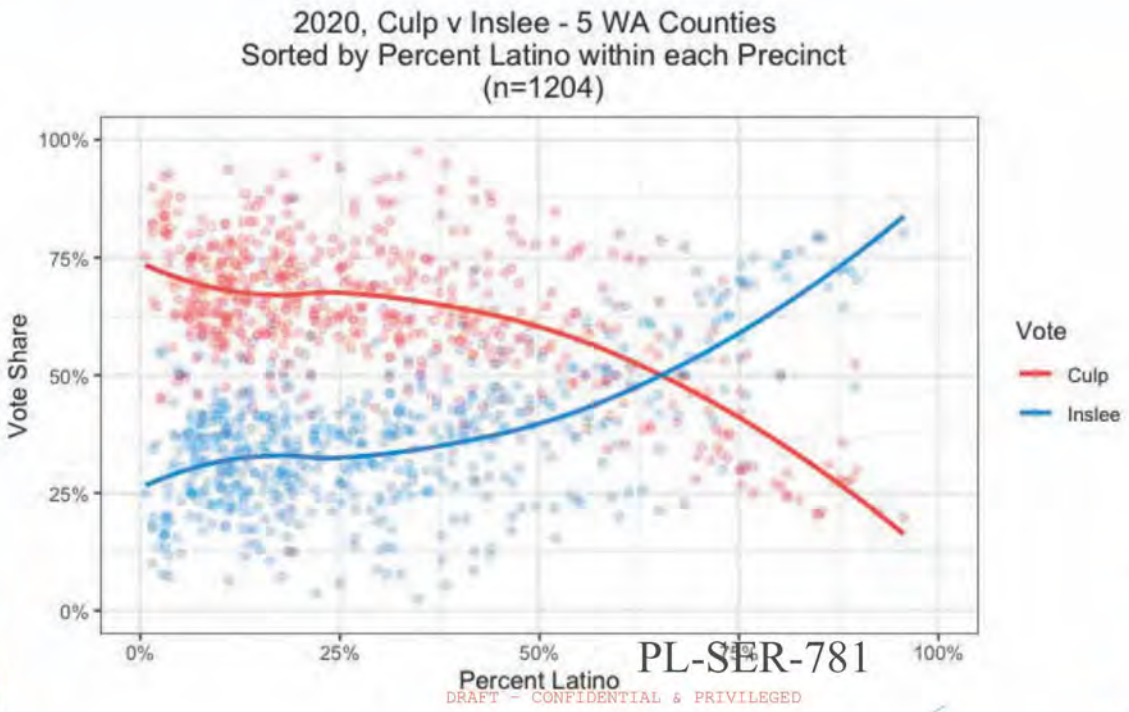
Voting Patterns in Yakima Valley Region: 2020



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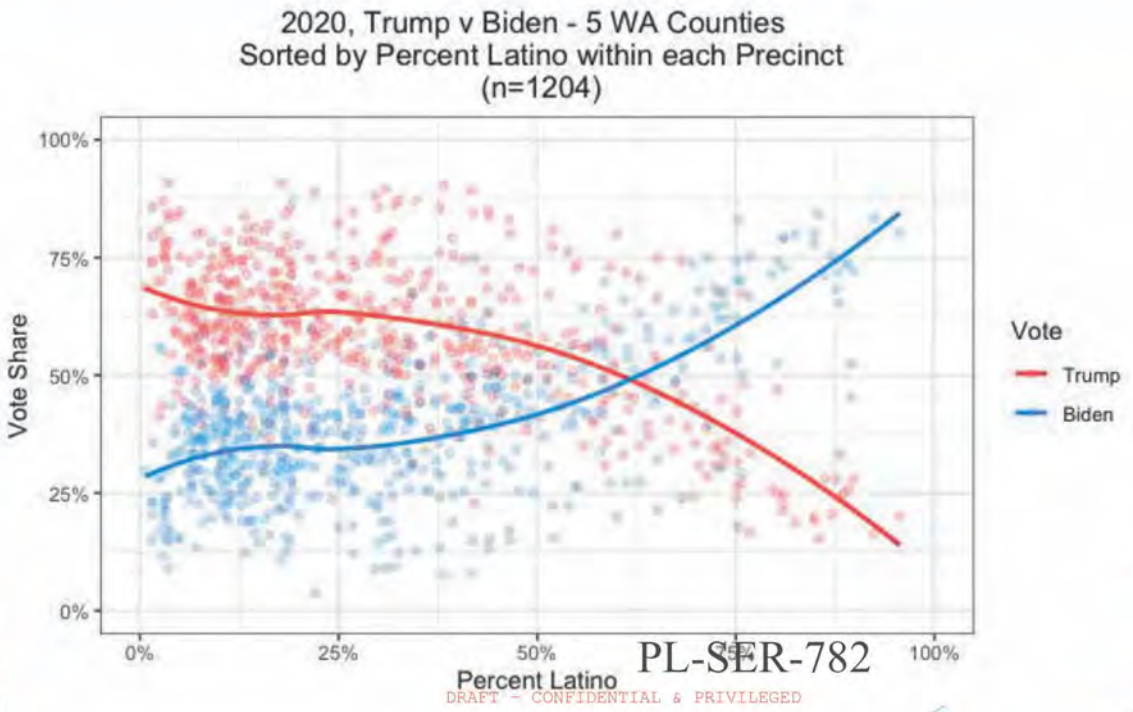
Voting Patterns in Yakima Valley Region: 2020



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Evaluating Different Maps

- Prior evidence is crystal clear – you have a strong finding of racially polarized voting in this 5-county region
  - Federal Court agreed in *Montes* lawsuit 2014, State Court agreed in WVRA Yakima County settlement in 2021
- Question for maps are the following:

1. Is it possible to create a majority-CVAP Latino district in the Yakima Valley region?

2. Do the proposed maps dilute or crack Latino voting strength?

3. Do the proposed maps "perform" to allow election of Latino candidates of choice, or will Latino-favored candidates lose?

4. What is the strongest Latino performing map that is VRA-compliant and not dilutive?

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Evaluating Different Maps

- House Republican Caucus
  - https://washington.mydistricting.com/legdistricting/comments/plan/1185/15
  - Text-book "cracking" of Latino population into 3 districts (14, 15, 16)
  - Latino Total Pop: 14th = 37% / 15th = 54% / 16th = 41%
  - Latino CVAP: 14th = 22% / 15th = 34% / 16th = 23%
- Senate Republican Caucus
  - https://washington.mydistricting.com/legdistricting/comments/plan/1186/15
  - Obvious racial gerrymander/cracking, likely an "intent" finding
  - Text-book "cracking" of Latino population into 4 districts (13, 14, 15, 16)
  - Latino Total Pop: 13th = 33% / 14th = 23% / 15th = 55% / 16th = 42%
  - Latino CVAP: 13th = 16% / 14th = 13% / 15th = 34% / 16th = 23%

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Evaluating Different Maps

- House Democratic Caucus
  - https://washington.mydistricting.com/legdistricting/comments/plan/1182/15
  - Latino Total Pop: 15th = 65% / 16th = 48%
  - Latino CVAP: 15th = 45% / 16th = 28%
  - TODAY Latino CVAP: 15th = 47.6%
- Senate Democratic Caucus
  - https://washington.mydistricting.com/legdistricting/comments/plan/1183/1
  - Latino Total Pop: 14th = 61% / 15th = 34%
  - Latino CVAP: 14th = 40% / 15th = 16%
  - TODAY Latino CVAP: 14th = 43.2%

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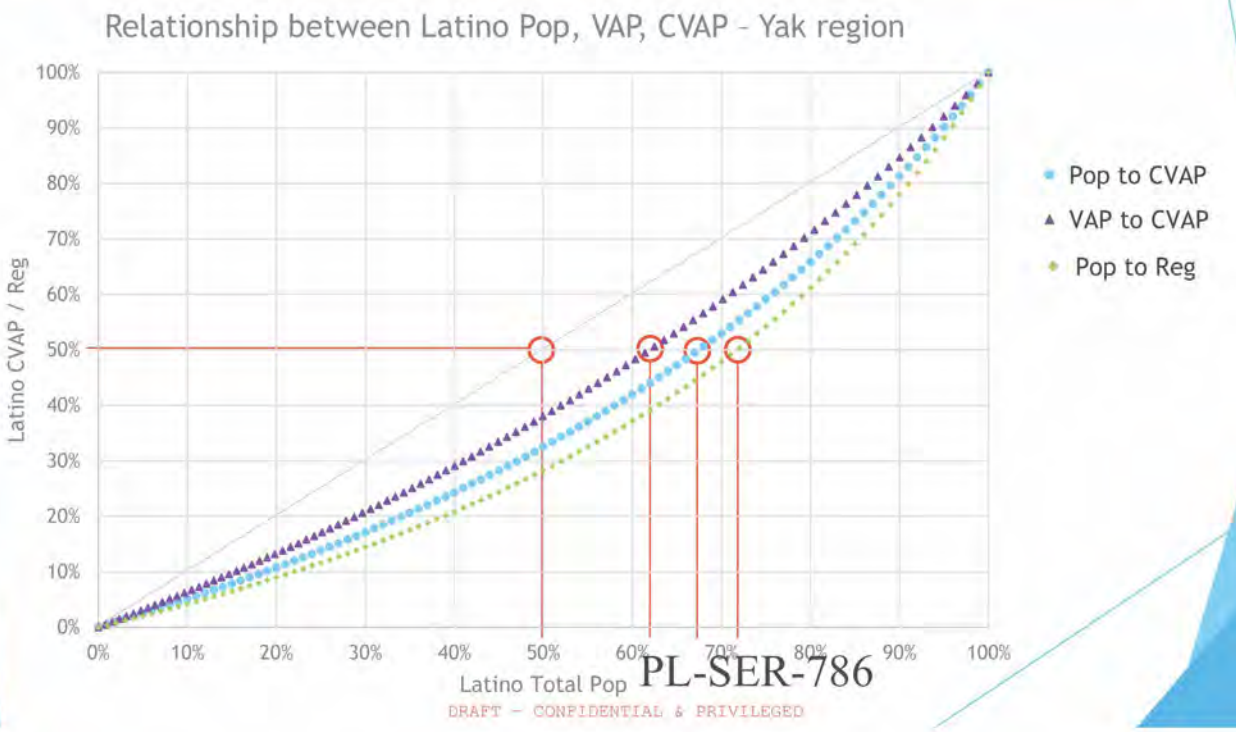
Comparing Latino Pop, VAP, CVAP & Reg



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

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Alternative Map: Yakima-Columbia River Valley

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Alternative Map: Yakima Reservation 1

Latino Pop 66%
Latino VAP 61%
Latino CVAP 46%

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Alternative Map: Yakima Reservation 2

Latino Pop 70%
Latino VAP 66%
Latino CVAP 48%

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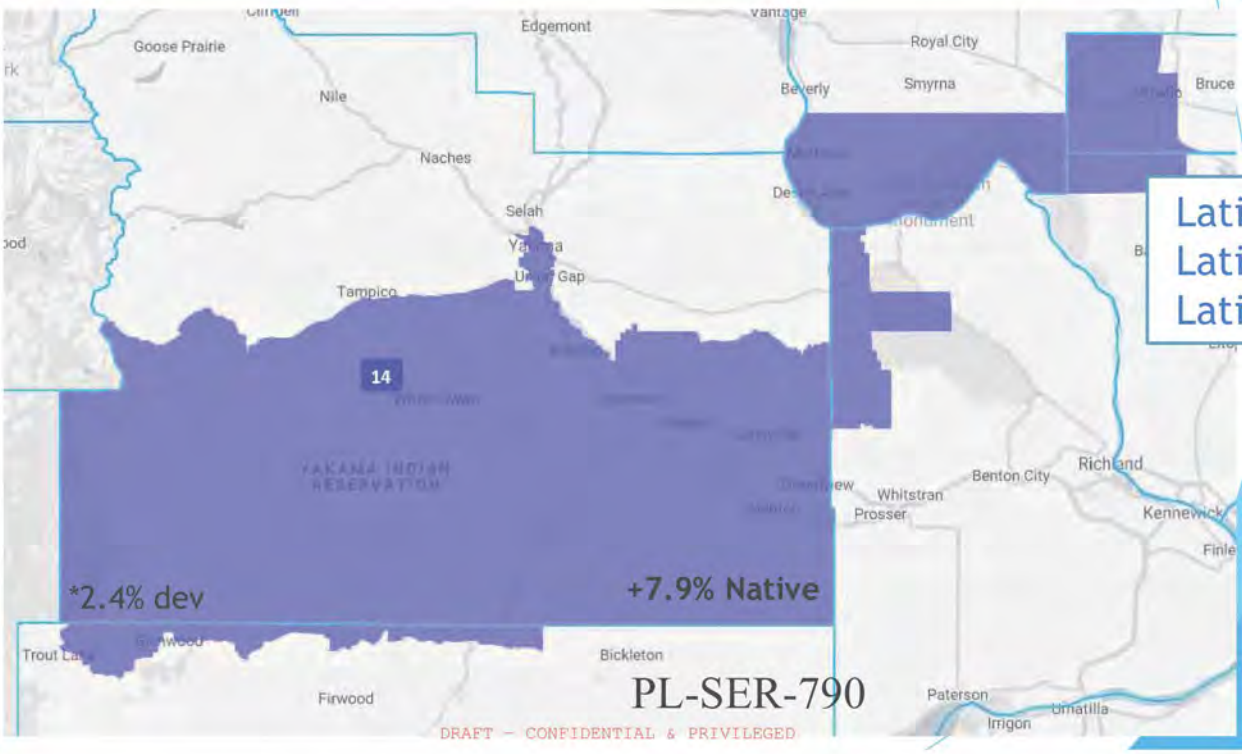
Alternative Map: Yakima Reservation 3



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Evaluating Different Maps

District Plan	Latino Pop	Latino CVAP '19	Latino CVAP now	Predict Dem	Predict Rep	Biden '20 margin
House Rep	54	34	35.9	38	62	-8,925
Senate Rep	55	34	36.1	43	57	-2,833
House Dem	65	45	47.6	50	50	4,607
Senate Dem	61	40	43.2	52	48	6,299
Yak-Rez 1	66	46	48.7	54	46	7,991
Yak-Rez 2	70	48	50.5	55	43	8,837
Yak-Rez 3	72	53	55.2	57	42	9,683
Yak-Col Riv	76	58	60.4	59	40	11,375

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THANK YOU

Dr. Matt Barreto, UCLA Political Science & Chicana/o Studies
Faculty Director of the UCLA Voting Rights Project
matt@uclavrp.org 909.489.2955

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From: McLean, Lisa <Lisa.McLean@redistricting.wa.gov>
Sent: Monday, November 01, 2021 5:18 PM EDT
To: Comment <Comment@redistricting.wa.gov>
Subject: FW: Dr. Barreto's VRA Analysis
Attachment(s): "WA VRA presentation FULL.pdf"

Hello all –

Per Commissioner Walkinshaw's comment today at the meeting, Ali has sent us the full VRA presentation prepared by Dr. Barreto. She also has offered to help connect you with Dr. Barreto should anyone want to talk to him.
Thanks,
Lisa

Lisa C. McLean
Executive Director
Washington State Redistricting Commission
PO Box 40948
Olympia, WA 98504-0948
Office: 360-999-5209
Mobile: 360-522-0373
www.redistricting.wa.gov

From: O'Neil, Ali <Ali.O'Neil@leg.wa.gov>
Sent: Monday, November 1, 2021 2:15 PM
To: Augustine, Sarah <Sarah.Augustine@redistricting.wa.gov>; McLean, Lisa <Lisa.McLean@redistricting.wa.gov>
Cc: Grunberg, Emma S. (ATG) <emma.grunberg@atg.wa.gov>; Heintz, Tera M. (ATG) <tera.heintz@atg.wa.gov>; Walkinshaw, Brady <Brady.Walkinshaw@redistricting.wa.gov>; Hall, Adam <Adam.Hall@leg.wa.gov>
Subject: Dr. Barreto's VRA Analysis

Hi Chair Augustine and Lisa,

As discussed in this afternoon's Commission meeting, Commissioner Walkinshaw asked that I send over the full analysis from Dr. Matt Barreto on the question of a VRA district in the Yakima Valley. You are welcome to circulate this to all commissioners and staff, and to post it publicly as well.

If anyone would like to speak to Dr. Barreto directly about his report, please let us know and we can make the connection. Thank you.

–
Ali O'Neil
315-663-8393

PLAINTIFF'S EXHIBIT 214

October 15, 2021

Assessment of voting patterns in Central / Eastern Washington and Review of Federal Voting Rights Act, Section 2 issues

Dr. Matt Barreto, UCLA Political Science & Chicana/o Studies
Faculty Director of the UCLA Voting Rights Project
matt@uclavrp.org 909.489.2955

VOTING RIGHTS PROJECT UCLA

1

Current Landscape in Washington

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

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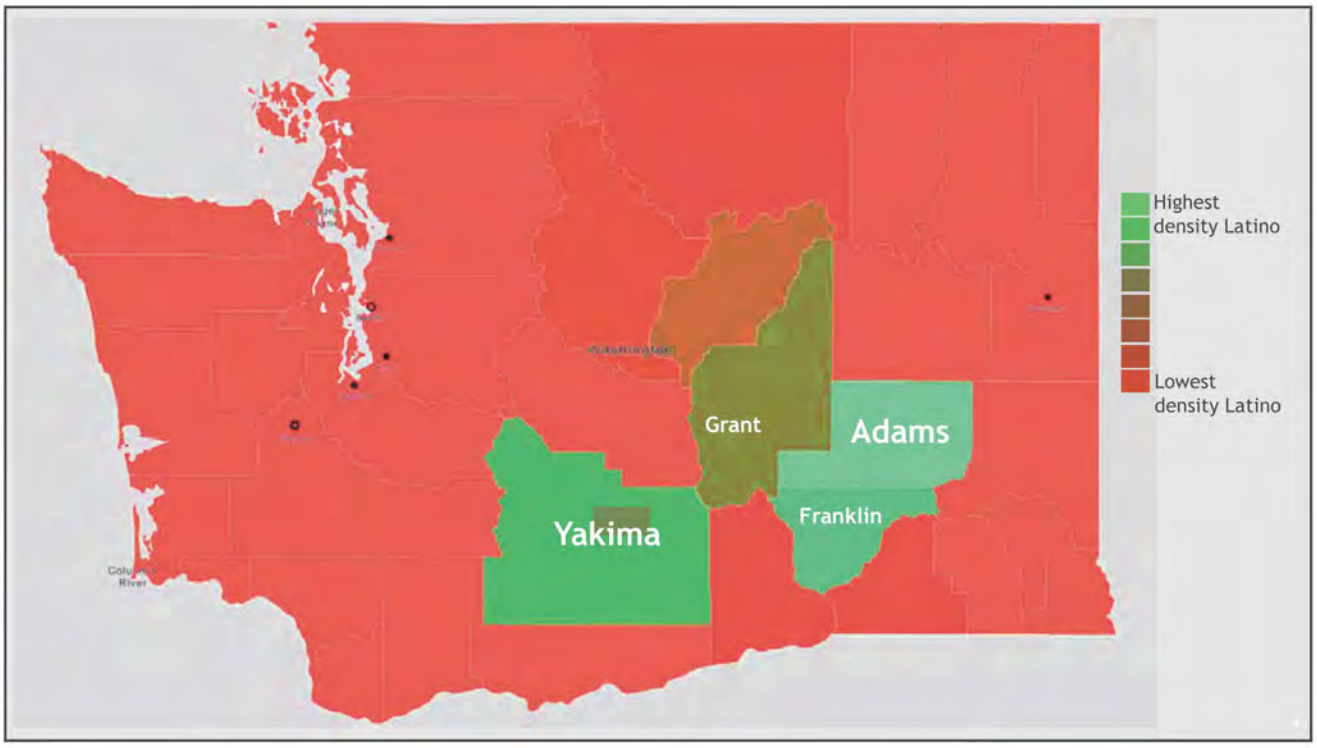
- The growth has been especially large in the Yakima Valley region and is quite concentrated

2

Highest density Latino
Lowest density Latino

3


Highest density Latino
Lowest density Latino
Grant
Adams
Franklin
Yakima

4

Section 2 of the Federal VRA

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

5

Section 2 of the Federal VRA

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

6

Section 2 of the Federal VRA

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

7

Section 2 of the Federal VRA

- Specifically, the VRA Section 2 prohibits districting plans that use racial gerrymandering to dilute minority rights to meaningful opportunity to elect candidates of choice
- Has been used by Black, Latino, AAPI, Native American, White plaintiffs to challenge districting schemes that draw lines in a way that "pack" or "crack" their population
- Goal is to find the right balance and create fair and equitable districts, and successfully defend the plans against legal challenges

8

The Gingles Test: Factor 1

- Minority group sufficiently large and geographically compact
  - Decennial Census
  - Census ACS 1-year or 5-year for CVAP
  - Voter file analysis
    - Spanish or Asian surname
    - New advancement in BISG

9

The Gingles Test: Factors 2 – 3

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

10

Defining Racially Polarized Voting

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

11

11

Defining Racially Polarized Voting

- Bottom line: minority voters are voting one way, and majority voters are voting another way
- But because majority voters are more numerous in the district, minority voters systematically lose.
- The analysis is about the individual voters within a jurisdiction. Even if a governing body is well intentioned, the individual voters across the county may behave in a way that blocks minority representation.

12

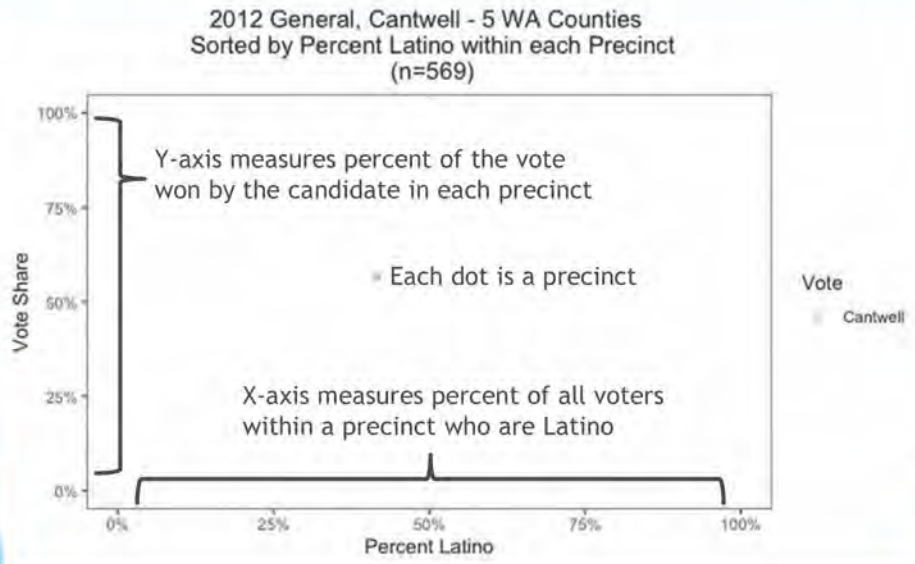
12

Measuring Racially Polarized Voting

- RPV can vary in degree of intensity, and it can be measured and quantified using statistical analysis that has been accepted by the courts.
- Your vote is secret - so how do we understanding voting patterns by race and ethnicity?
- We have developed improved ecological inference techniques to use precinct-level vote results and racial demographics (Barreto, Collingwood, Garcia-Rios & Oskooii, 2016, 2019)

13

Measuring Racially Polarized Voting



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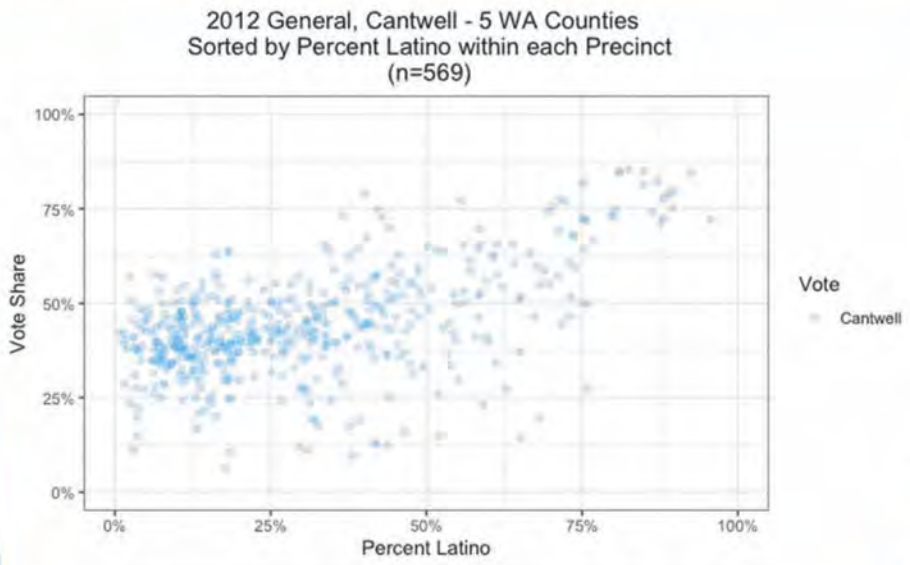
Measuring Racially Polarized Voting



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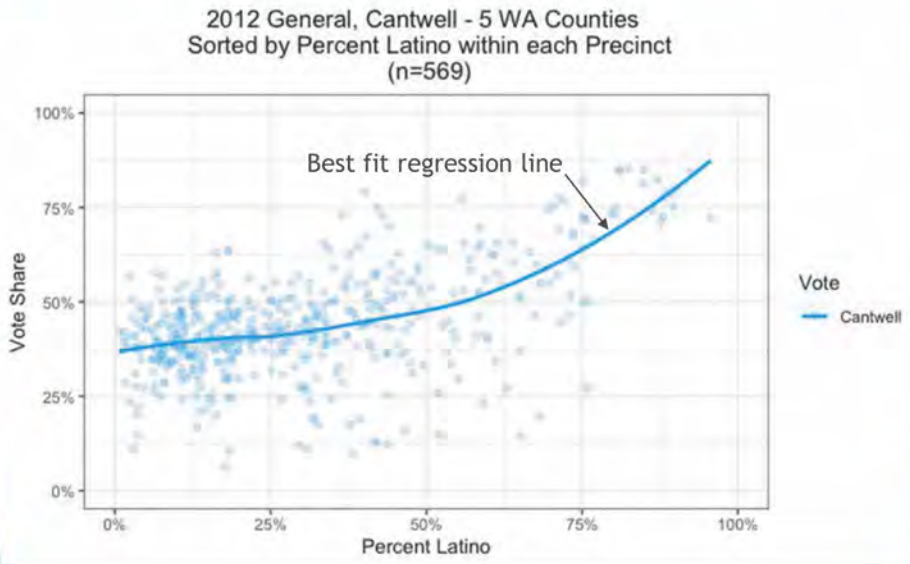
Measuring Racially Polarized Voting



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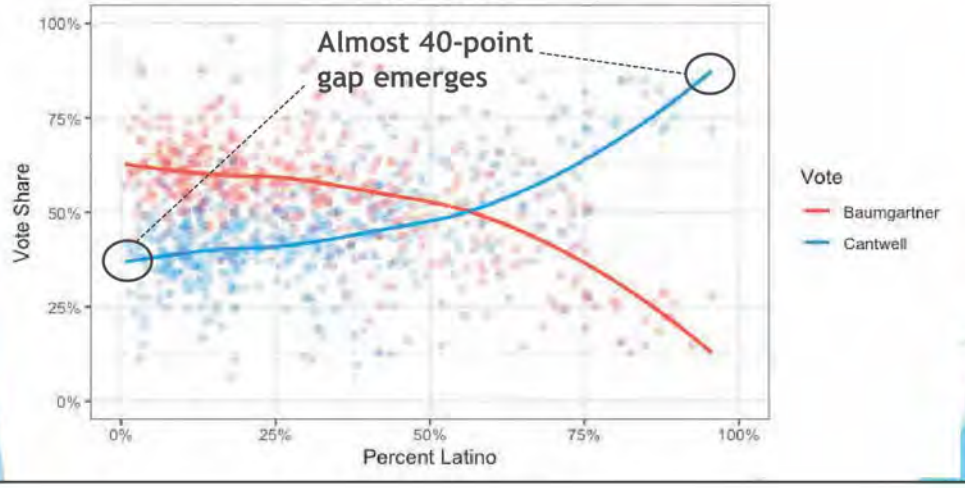
Measuring Racially Polarized Voting

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



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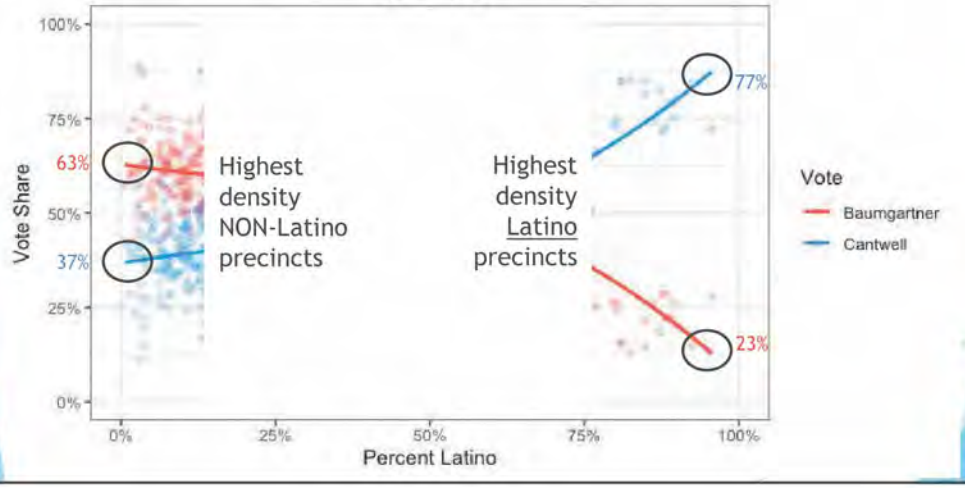
Measuring Racially Polarized Voting

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



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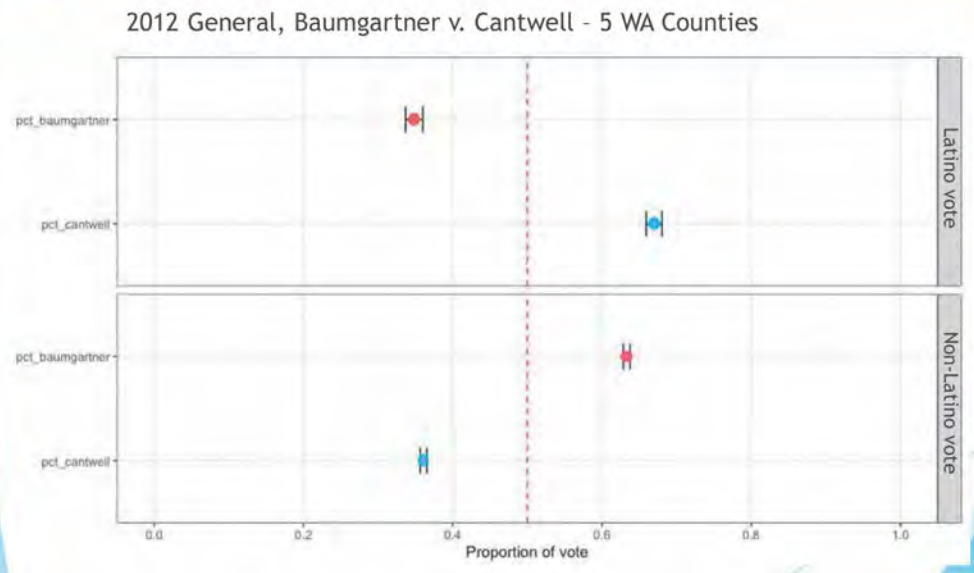
Measuring Racially Polarized Voting



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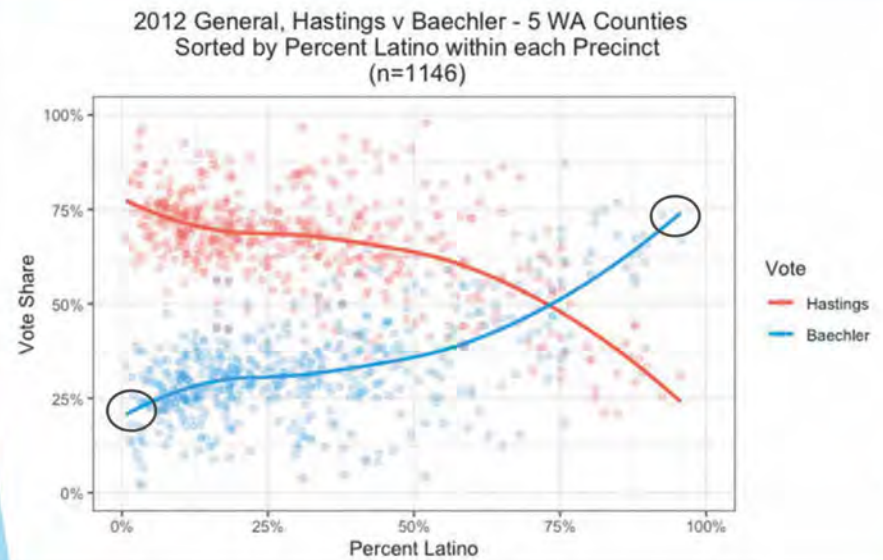
Voting Patterns in Yakima Valley Region: 2012



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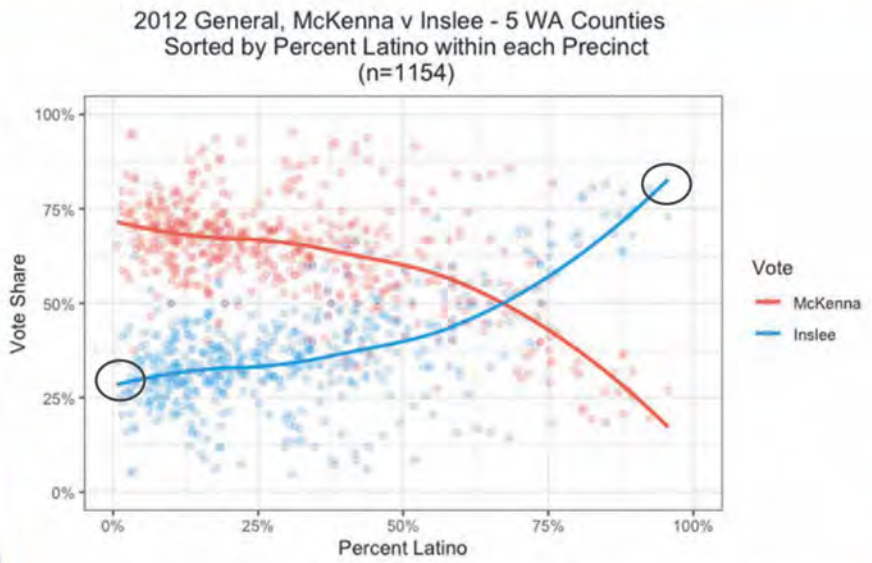
Voting Patterns in Yakima Valley Region: 2012



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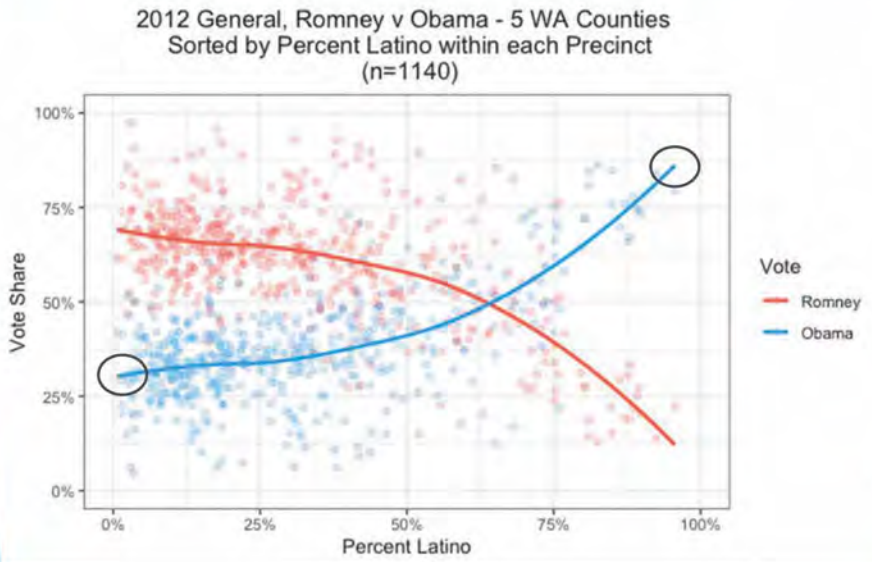
Voting Patterns in Yakima Valley Region: 2012



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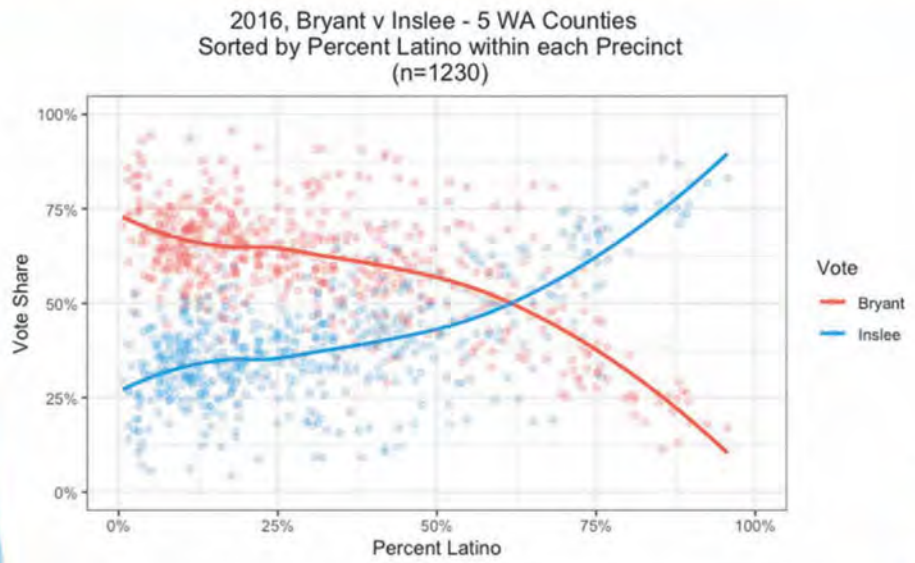
Voting Patterns in Yakima Valley Region: 2016



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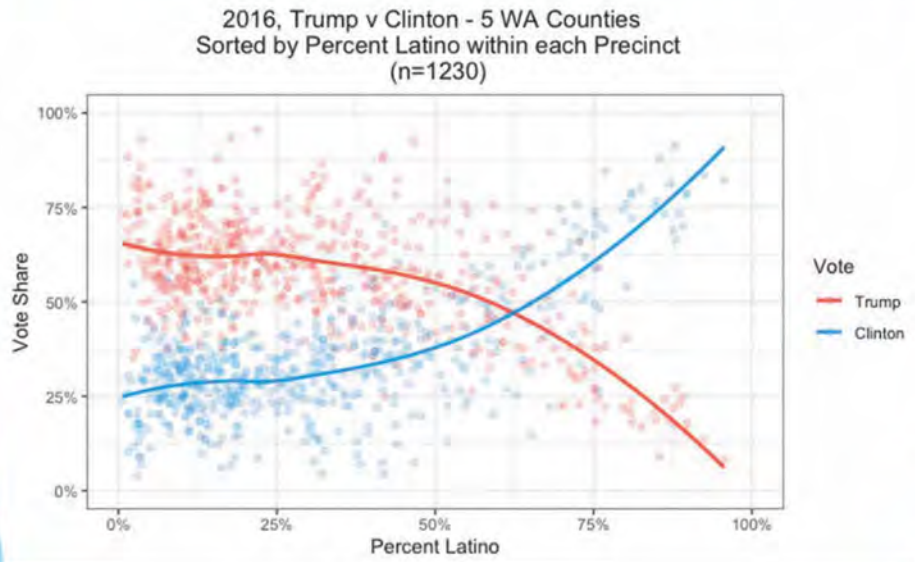
Voting Patterns in Yakima Valley Region: 2016



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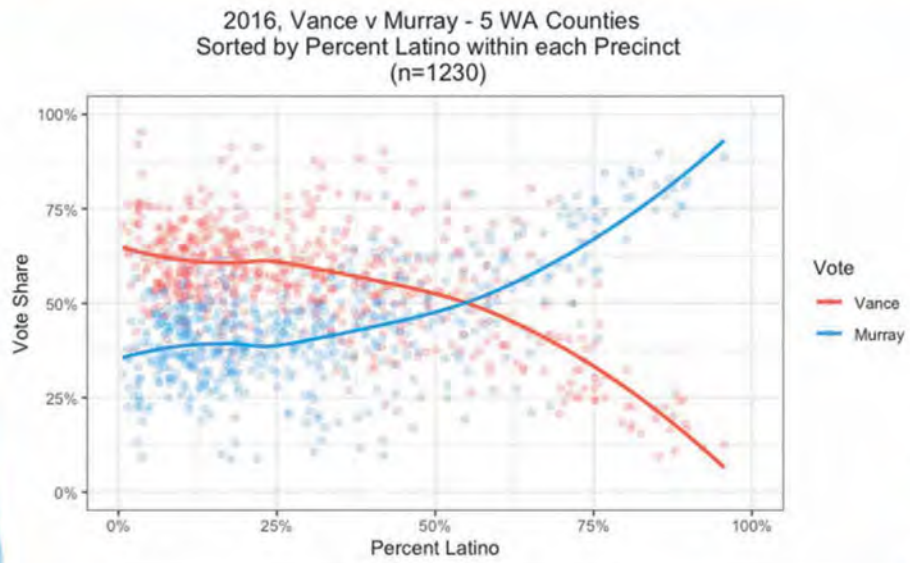
Voting Patterns in Yakima Valley Region: 2016



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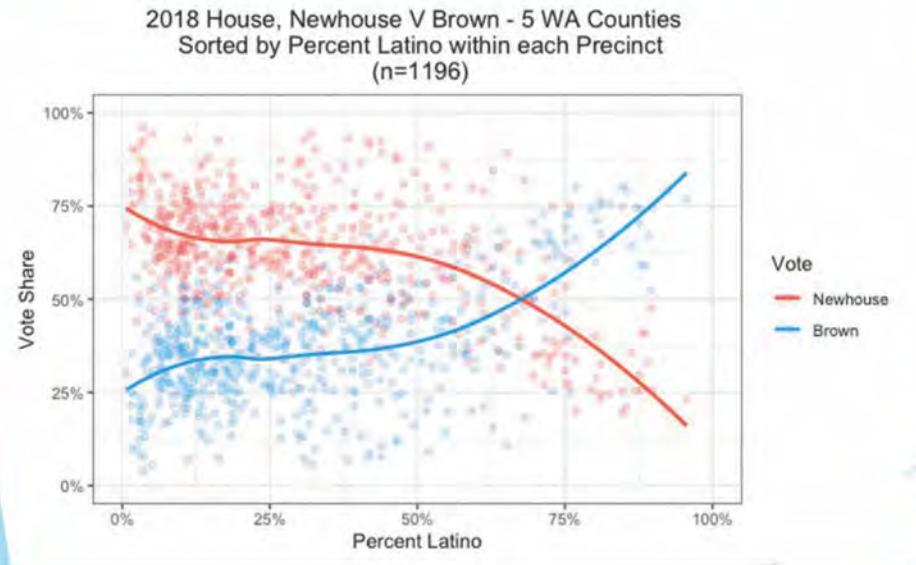
Voting Patterns in Yakima Valley Region: 2018



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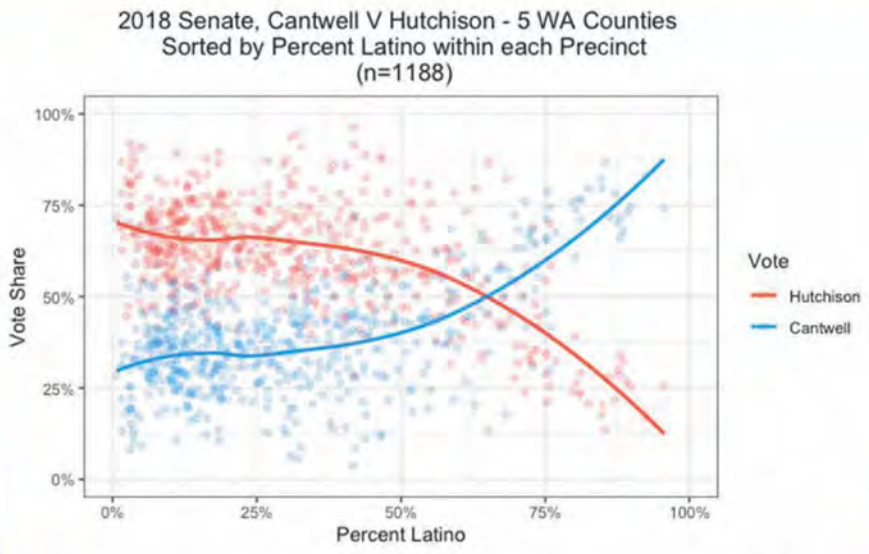
Voting Patterns in Yakima Valley Region: 2018



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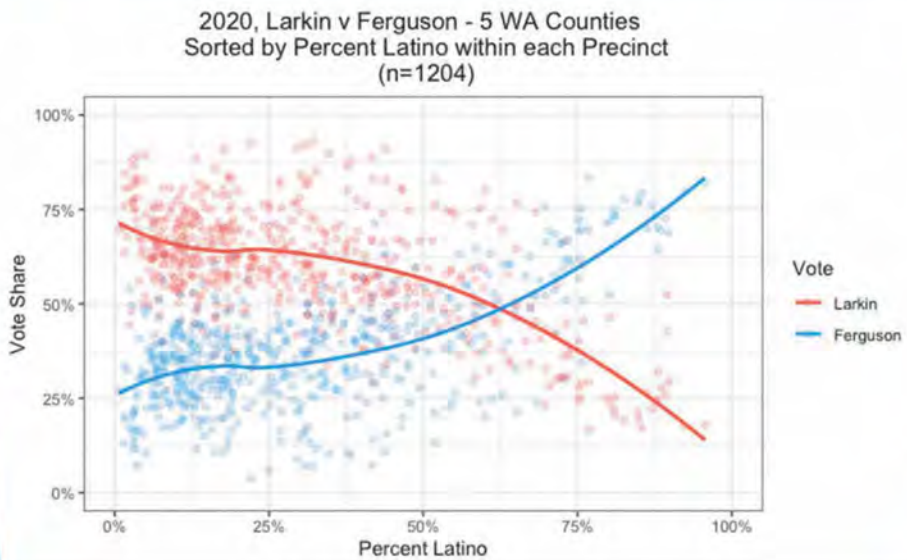
Voting Patterns in Yakima Valley Region: 2020



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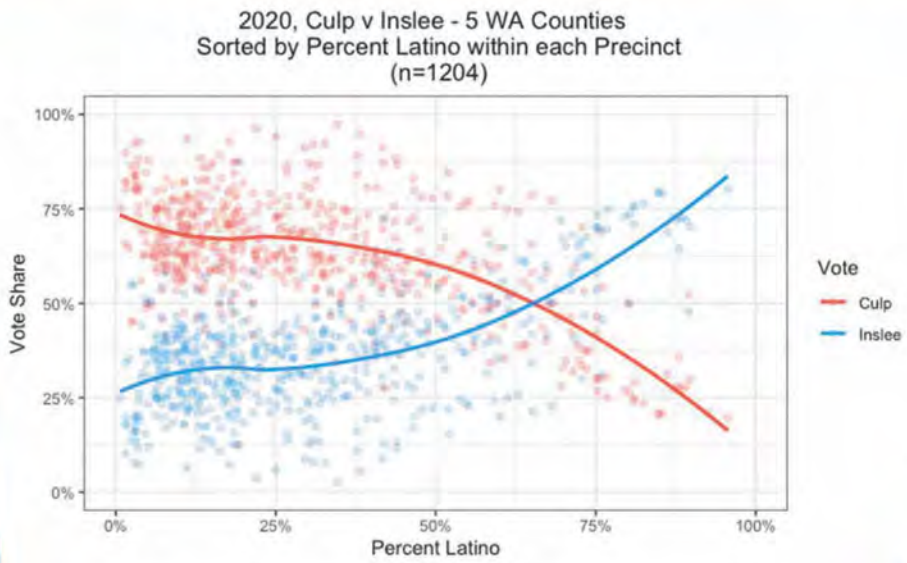
Voting Patterns in Yakima Valley Region: 2020



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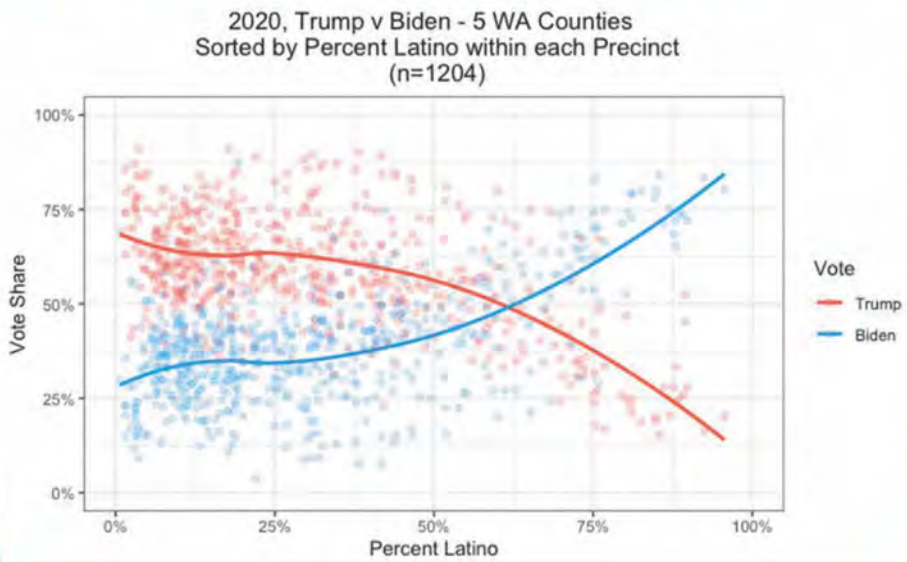
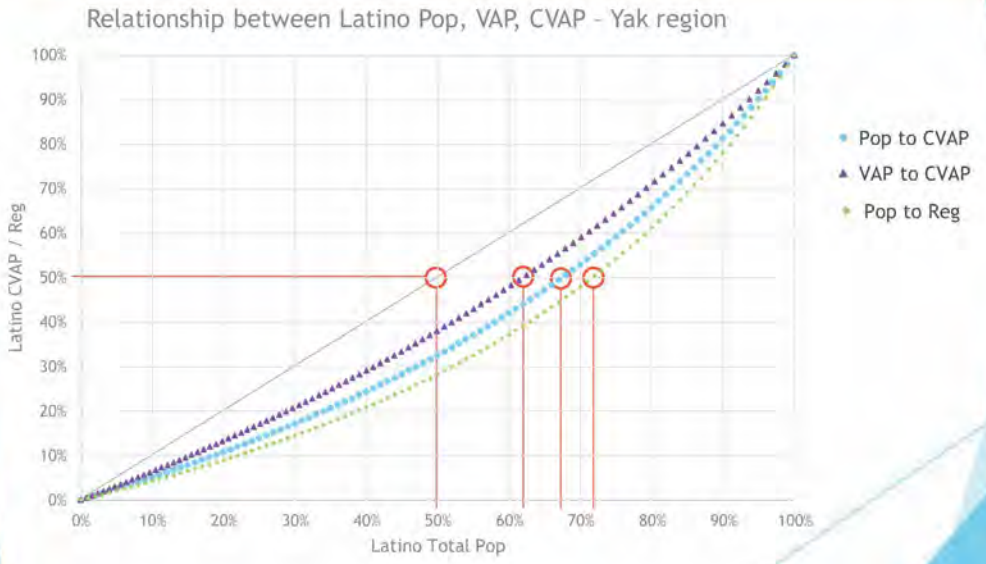
Voting Patterns in Yakima Valley Region: 2020



30

Comparing Latino Pop, VAP, CVAP & Reg



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

31

31

Evaluating Different Maps

- Prior evidence is crystal clear - you have a strong finding of racially polarized voting in this 5-county region
  - Federal Court agreed in *Montes* lawsuit 2014, State Court agreed in WVRA Yakima County settlement in 2021
- Question for maps are the following:

1. Is it possible to create a majority-CVAP Latino district in the Yakima Valley region?
2. Do the proposed maps dilute or crack Latino voting strength?
3. Do the proposed maps "perform" to allow election of Latino candidates of choice, or will Latino-favored candidates lose?
4. What is the strongest Latino performing map that is VRA-compliant and not dilutive?

32

32

Evaluating Different Maps

- Commissioner Graves' 9.21 proposal
  - https://washington.mydistricting.com/legdistricting/comments/plan/1185/15
  - Text-book "cracking" of Latino population into 3 districts (14, 15, 16)
  - Latino Total Pop: 14th = 37% / 15th = 54% / 16th = 41%
  - Latino CVAP: 14th = 22% / 15th = 34% / 16th = 23%
- Commissioner Fain's 9.21 proposal
  - https://washington.mydistricting.com/legdistricting/comments/plan/1186/15
  - Obvious racial gerrymander/cracking, likely an "intent" finding
  - Text-book "cracking" of Latino population into 4 districts (13, 14, 15, 16)
  - Latino Total Pop: 13th = 33% / 14th = 23% / 15th = 55% / 16th = 42%
  - Latino CVAP: 13th = 16% / 14th = 13% / 15th = 34% / 16th = 23%

33

33

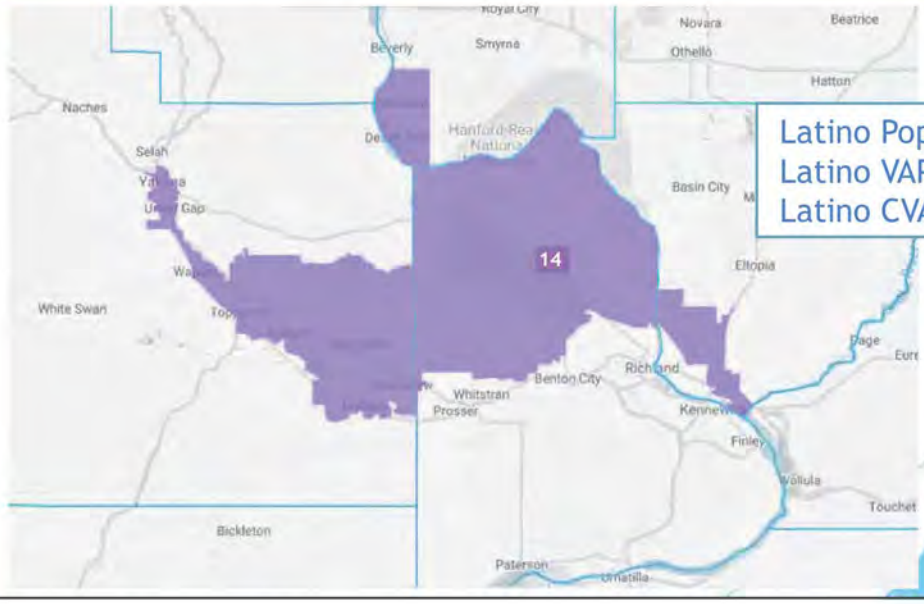
Evaluating Different Maps

- Commissioner Sims' 9.21 proposal
  - https://washington.mydistricting.com/legdistricting/comments/plan/1182/15
  - Latino Total Pop: 15th = 65% / 16th = 48%
  - Latino CVAP: 15th = 45% / 16th = 28%
  - TODAY Latino CVAP: 15th = 47.6%
- Commissioner Walkinshaw's 9.21 proposal
  - https://washington.mydistricting.com/legdistricting/comments/plan/1183/15
  - Latino Total Pop: 14th = 61% / 15th = 34%
  - Latino CVAP: 14th = 40% / 15th = 16%
  - TODAY Latino CVAP: 14th = 43.2%

34

34

VRA Compliant Option-1: Yakima-Columbia River Valley



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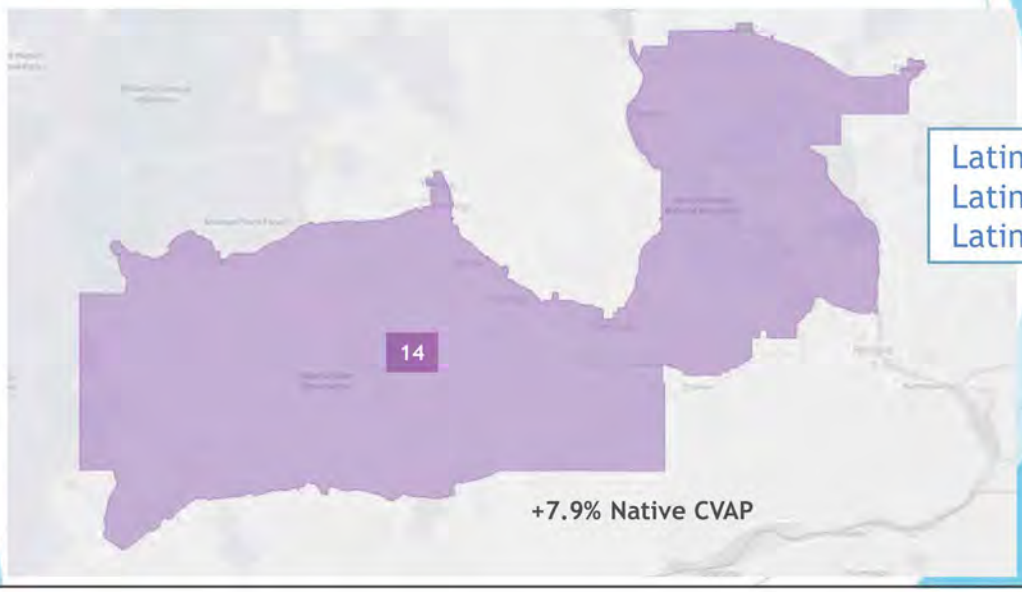
VRA Compliant Option-2: Yakama Reservation



36

Evaluating Different Maps

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

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

37

37

THANK YOU

Dr. Matt Barreto, UCLA Political Science & Chicana/o Studies
Faculty Director of the UCLA Voting Rights Project
matt@uclavrp.org 909.489.2955

38

November 18, 2021
I am writing this at the direction of my attorney.

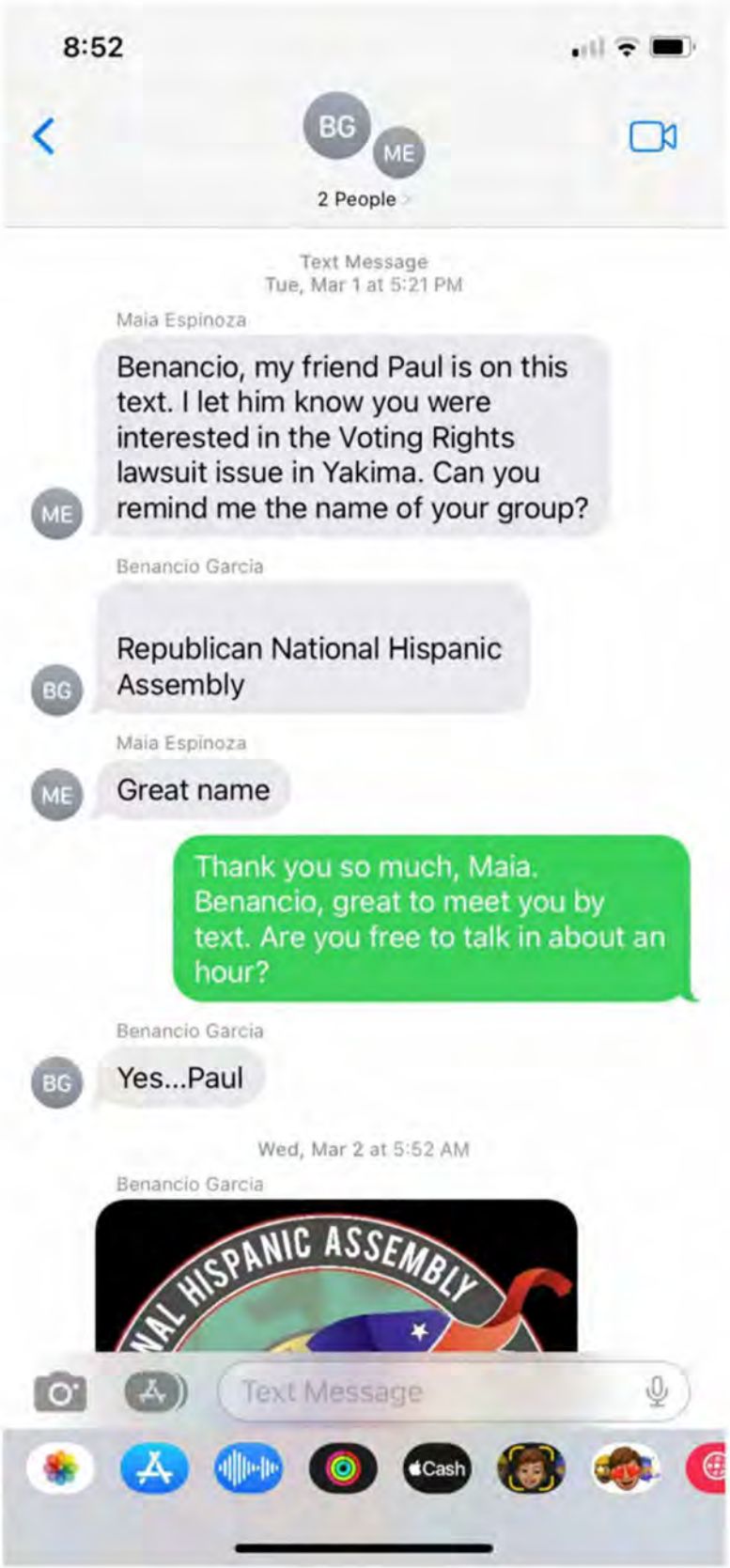
Timeline of Events

Recollections/reactions/impressions	**Timestamps/emails/events/messages**
Thursday, November 11th	
Coalition members said on the call that they preferred that the commission adopt one of their two proposed districts for that region. They said that if commissioners couldn't negotiate that into the map, that they would prefer the commissioners not vote on any proposal, and allow the State Supreme Court to take over drawing the maps. If that were not an option, they also said they would be willing and ready to sue maps that were not compliant. They then asked the commissioners to vote for a map with a district that would give them the best chance at winning a successful VRA lawsuit in Yakima.	On Thursday, November 11th, both Brady and April Sims (and staff) had a call with members of the Redistricting Justice for Washington Coalition about the question of a VRA-compliant legislative district in the Yakima Valley.
Commissioner Sims and Graves had been discussing partisan numbers during their negotiations. A few maps had been exchanged, but they were often sent to me and Commissioner Walkinshaw after they were shared in those negotiations.	
As it got closer to the deadline, around the last full week of discussions, the focus was less and less on maps as I understand it, and more about the partisan numbers that the Commissioners wanted in certain key districts. There were proposals exchanged around how the districts would be drawn to fit a specific partisan metric, that had been agreed to by two of the four commissioners.	
Friday, November 12th	
On the evening of Friday the 12th, we heard from commissioner sims team that Graves was unwilling to follow their previous agreement around partisanship numbers, and that he wanted to start over and was going to draw and propose a new legislative district map outside that framework.	EXHIBIT 22 O'Neil 11-16-2022

PLAINTIFF'S EXHIBIT 388

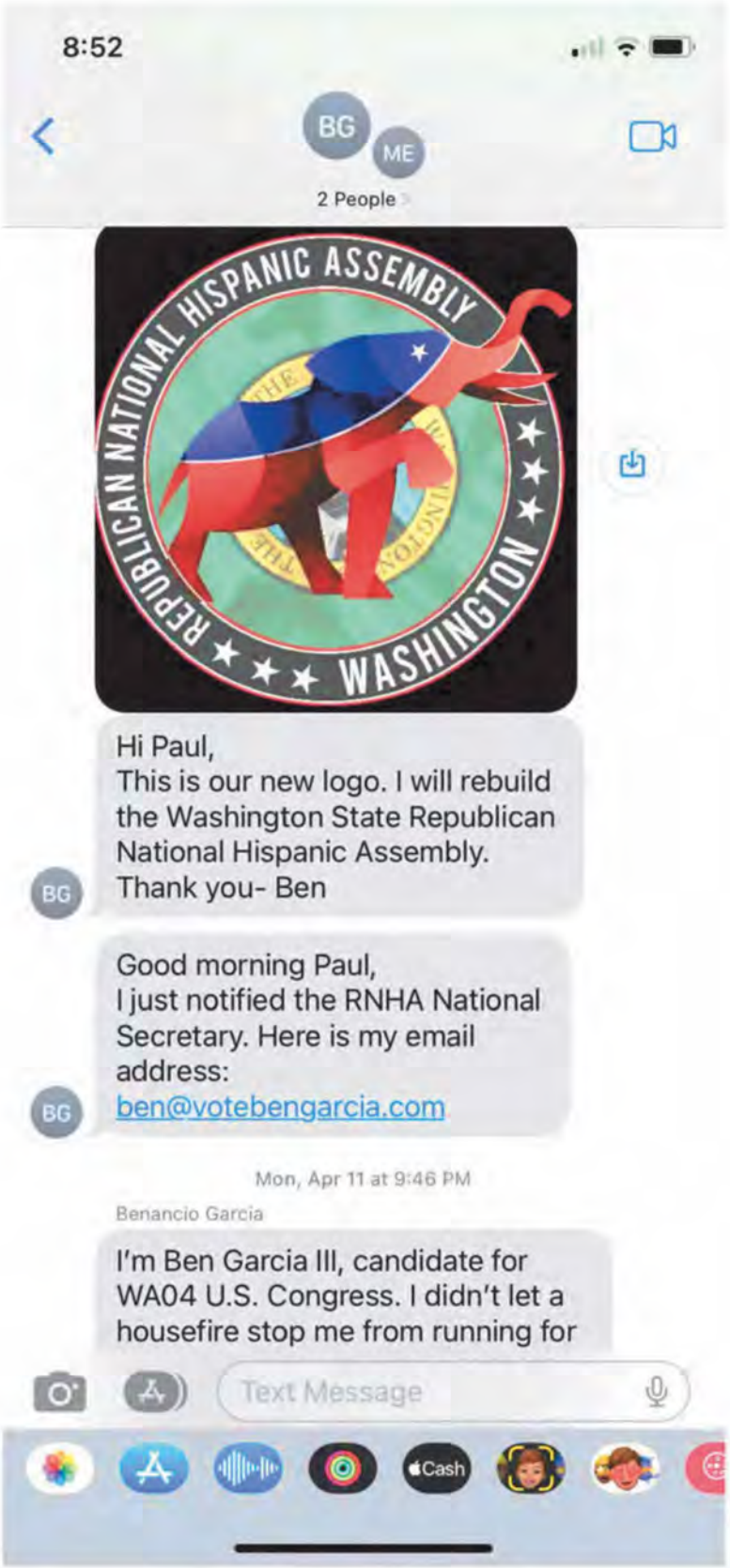
November 18, 2021
I am writing this at the direction of my attorney.

Brady told graves that his priority was a VRA compliant district, but that he would not negotiate a VRA district for anything else in the map and that he might be willing to vote for a district that was not compliant. He asked for the republicans to draw the district the way they wanted, and for it to be the 14th district. Graves insisted that he wanted to make it majority Hispanic by CVAP, but that it would be a Republican district, and that he wanted to do this to be able to protect against any lawsuit. He said repeatedly that this was the best thing to do to not lose a lawsuit.	(timestamped messages from me to the SDC team saying that Graves didn't want a lawsuit)
Graves told us that he was close to a deal with commissioner sims, and Brady said that he was in lockstep with Commissioner Sims.	
After debriefing with commissioner sims and her team, we went our separate ways for a few hours. I believe Commissioner sims was meeting and continuing to negotiate with commissioner graves around their partisanship numbers.	
Our internal SDC team was continuing to draw maps based on what I thought was being discussed in the commissioner calls. I was trying to relay to both commissioners sims and Walkinshaw and to the staff that were present, to guide their discussions with the republicans so that so we would be aware of how it impacted the maps, and how we could draw lines without splitting cities, while keeping priorities that were laid out in public comment, while keeping districts majority-minority where applicable, and while adhering to the statute.	(emails, time stamped messages from me to Osta and to Brady)
Brady and commissioner sims agreed with each other and communicated to the republicans that they both would be willing to vote for a map that meets the framework that was negotiated by commissioners sims and graves.	Teams message from me to the SDC team



PLAINTIFF'S EXHIBIT
399

Palmer_Graves_000599



Palmer_Graves_000600

PLAINTIFF'S EXHIBIT 400

2:19

98

P

Paul Graves

iMessage
Wed, Mar 2, 4:03 PM

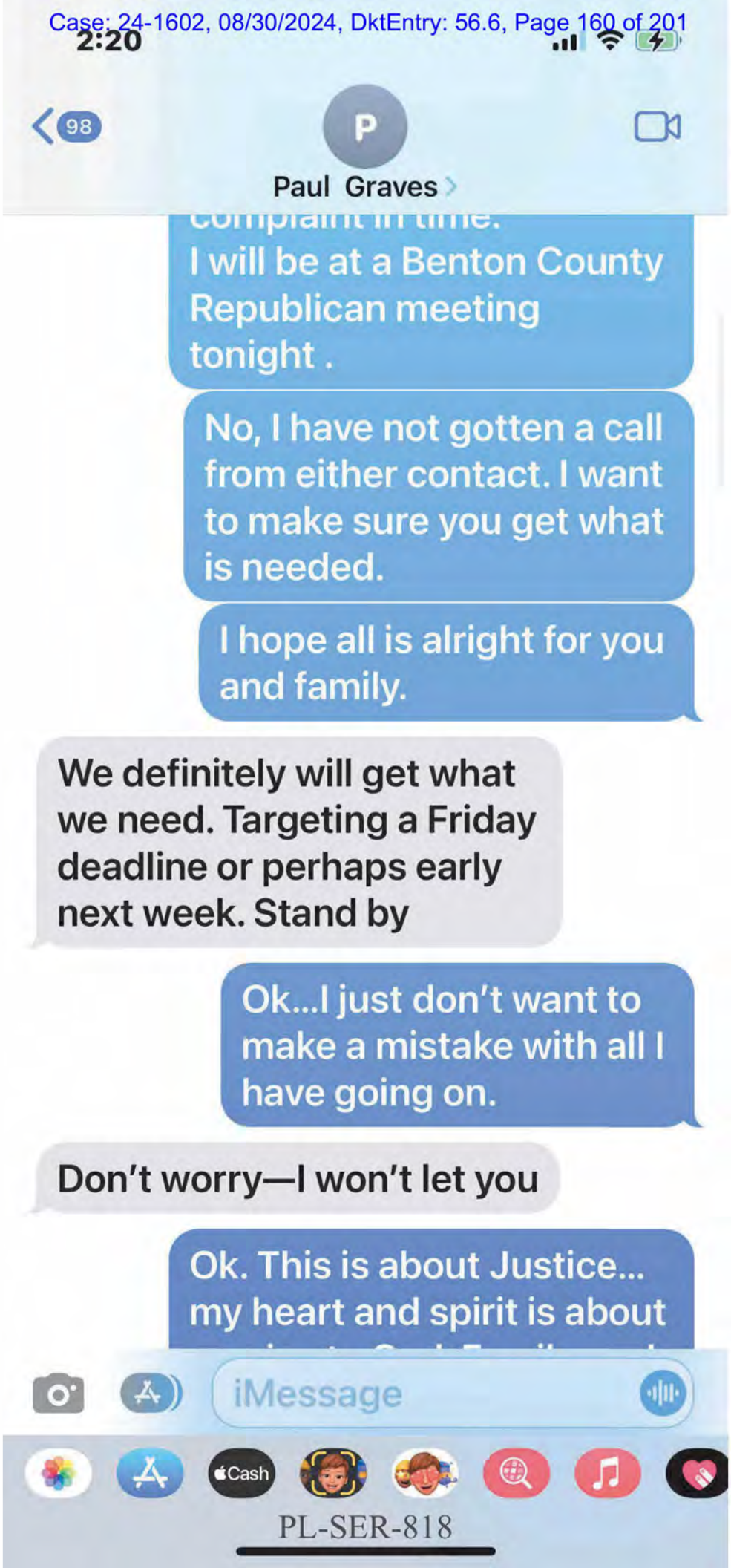
Hi Ben. I've had a little family emergency to work through today. Have you heard from Rob Maguire or David Nordlinger from the Davis Wright law firm? I gave them your contact info

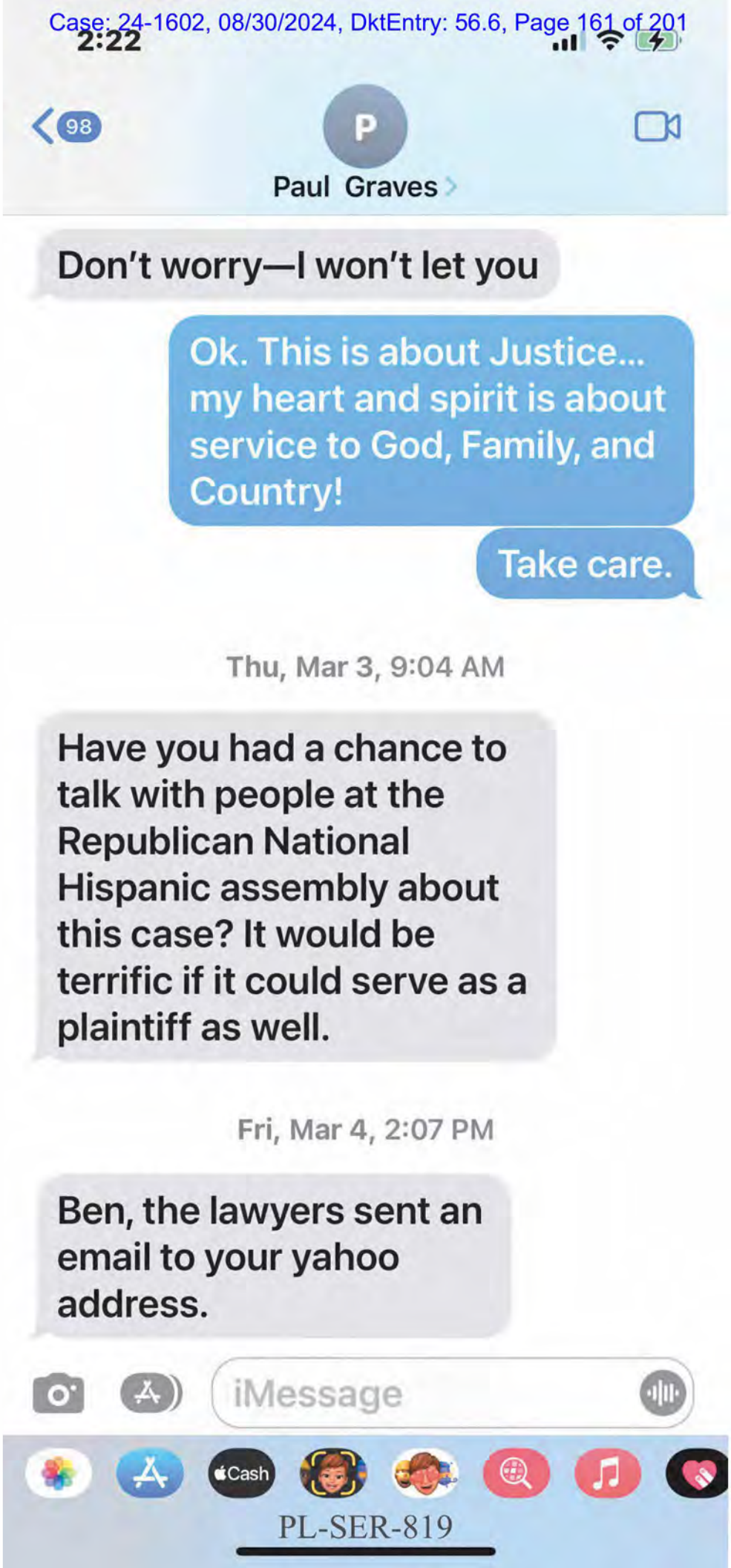
Hi Paul,
I've been busy all day. Left a voicemail to make sure that whatever you need from me it gets done in time to file against the complaint in time.
I will be at a Benton County Republican meeting tonight .

No, I have not gotten a call from either contact. I want

iMessage

Cash


2:20
98
P
Paul Graves
I will be at a Benton County Republican meeting tonight .
No, I have not gotten a call from either contact. I want to make sure you get what is needed.
I hope all is alright for you and family.
We definitely will get what we need. Targeting a Friday deadline or perhaps early next week. Stand by
Ok...I just don't want to make a mistake with all I have going on.
Don't worry—I won't let you
Ok. This is about Justice... my heart and spirit is about
iMessage
Cash


2:22
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P
Paul Graves
Don't worry—I won't let you
Ok. This is about Justice... my heart and spirit is about service to God, Family, and Country!
Take care.
Thu, Mar 3, 9:04 AM
Have you had a chance to talk with people at the Republican National Hispanic assembly about this case? It would be terrific if it could serve as a plaintiff as well.
Fri, Mar 4, 2:07 PM
Ben, the lawyers sent an email to your yahoo address.
iMessage
Cash

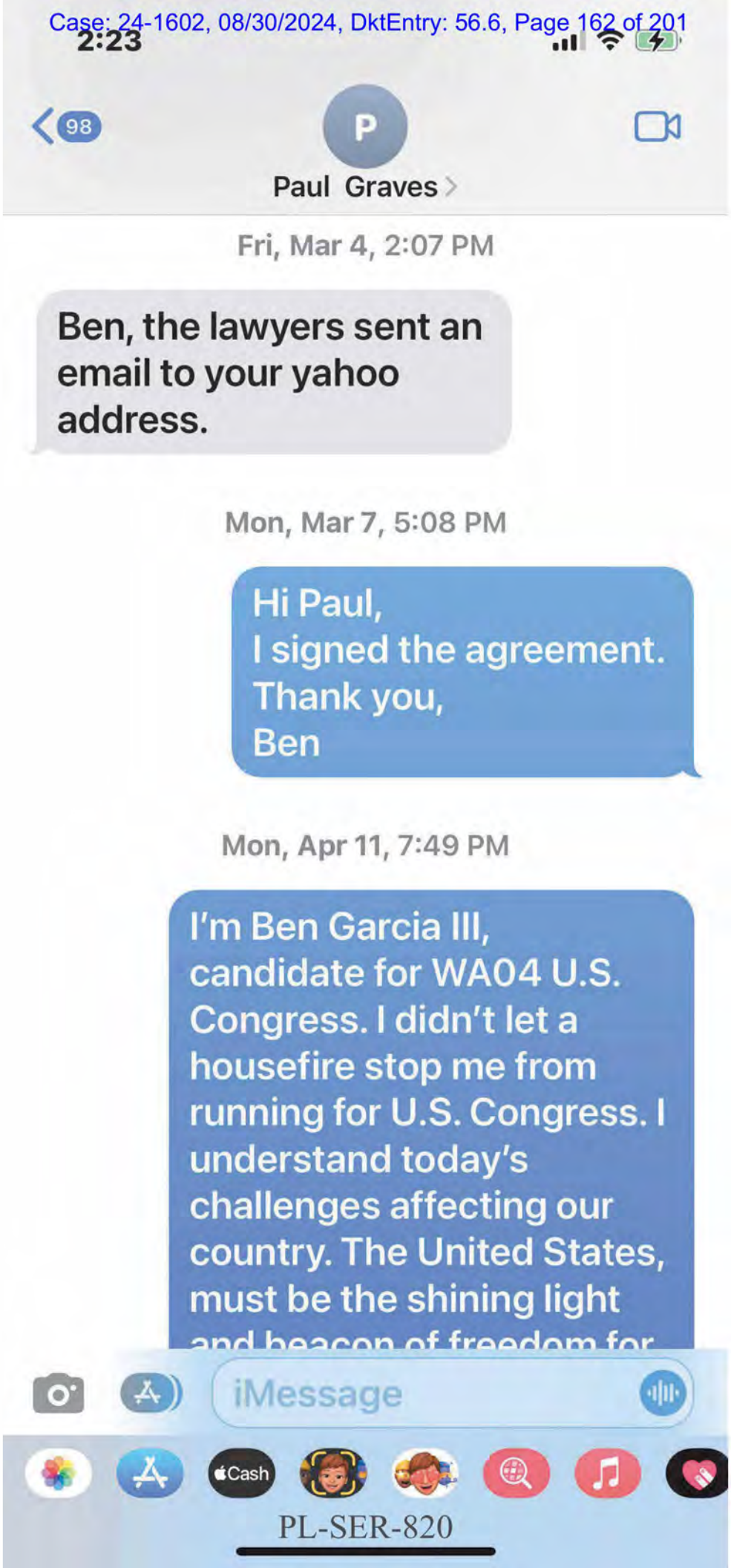
2:23
98
P
Paul Graves
Fri, Mar 4, 2:07 PM
Ben, the lawyers sent an email to your yahoo address.
Mon, Mar 7, 5:08 PM
Hi Paul,
I signed the agreement.
Thank you,
Ben
Mon, Apr 11, 7:49 PM
I'm Ben Garcia III, candidate for WA04 U.S. Congress. I didn't let a housefire stop me from running for U.S. Congress. I understand today's challenges affecting our country. The United States, must be the shining light
iMessage
Cash

EXHIBIT 2

12-14-2022
Paul Graves
EXHIBIT 6
Jeanne Gerstenberg, RPR, CCR No. 2511

PLAINTIFF'S
EXHIBIT
401

From:
Sent: Monday, March 7, 2022 8:17 AM PST
To: robmaguire@dwt.com
Subject: Re: Connect re Washington state

Drew Stokesbary
Stokesbary PLLC
1003 Main St., Suite 5
Sumner, WA 98390
www.stokesbarypllc.com

On Mar 7, 2022, at 7:48 AM, Maguire, Robert <robmaguire@dwt.com> wrote:

Rob Maguire
Davis Wright Tremaine LLP

Begin forwarded message:

From: "Maguire, Robert" <robmaguire@dwt.com>
Date: March 4, 2022 at 10:40:34 AM PST
To: Adam Kincaid <adam@thenrrt.org>
Cc: "Nordlinger, David" <DavidNordlinger@dwt.com>, harrykorrell@dwt.com
Subject: RE: Connect re Washington state

Hi Adam -

It's nice to meet you. Please let me know if you have a few minutes to talk today about Washington redistricting litigation plans. Thanks.

Rob Maguire | Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300 | Seattle, WA 98104
Tel: (206) 757-8094 | Fax: (206) 757-7094
Email: robmaguire@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Washington, D.C.

-----Original Message-----
From: Paul Graves <paul@enterprisewashington.org>
Sent: Friday, March 4, 2022 7:09 AM
To: Adam Kincaid <adam@thenrrt.org>; Maguire, Robert <robmaguire@dwt.com>; Nordlinger, David <DavidNordlinger@dwt.com>

Subject: Connect re Washington state

[EXTERNAL]

Rob, David, Adam,

Rob and David are lawyers at Davis Wright Tremaine here in Seattle, getting up to speed on the redistricting litigation. Adam runs the National Republican redistricting trust, and it's foundation, the Fair Lines America Foundation, which I believe can serve as a financing vehicle for this work. I'll let you three connect.

Paul Graves
President, Enterprise Washington
206-818-5607
Sent from my phone

PLAINTIFF'S EXHIBIT 405

From:	Drew Stokesbary
Date:	April 21, 2022 9:04:53 AM (-07)
To:	John Braun; JT Wilcox; Jim Troyer; Caleb Heimlich
Subject:	**Re: Status of Redistricting Litigation**
Attachments:	Redistricting Litigation Memo.pdf;

Thanks everyone for the feedback on the slide deck, it was helpful.

Along similar lines, here's an updated "legal memo" I put together as well. The idea here was to create something a little more high-level than the slide deck, as well as a document that could be sent to interested parties as a standalone document (i.e., without me or somebody else needing to walk them through slide by slide). At least for now, it seems wise to keep CADF's logo off these materials given Paul's involvement in the Commission and CADF. Anyway, I've already had a couple folks ask for something like this so let me know if you have any thoughts or suggestions when you have a chance.

Thanks,
Drew

Drew Stokesbary
President
Citizen Action Defense Fund

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From: Drew Stokesbary <drew@citizenactiondefense.org>
Date: Tuesday, April 19, 2022 at 3:50 PM
To: John Braun <JohnBraun@braunnorthwest.com>, JT Wilcox <jtwilcox111@gmail.com>, Jim Troyer <jamestroyer@comcast.net>, Caleb Heimlich <calebheimlich@wsrp.org>
Subject: Re: Status of Redistricting Litigation

Here's a slide deck I put together for prospective donors, etc. Let me know if you have any suggestions on conveying relevant info—always a challenge to provide the appropriate level of detail of complex issues for folks with little-to-know context.

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From: Drew Stokesbary <drew@citizenactiondefense.org>
Date: Tuesday, April 19, 2022 at 10:12 AM
To: John Braun <JohnBraun@braunnorthwest.com>, JT Wilcox <jtwilcox111@gmail.com>, Jim Troyer <jamestroyer@comcast.net>, Caleb Heimlich <calebheimlich@wsrp.org>
Subject: Re: Status of Redistricting Litigation

EXCITING NEWS: we found a national donor willing to match up to $250k for the litigation effort. In conjunction with this, Jason Torchinsky, a partner at Holtzman Vogel with extensive experience in redistricting litigation, would agree to join the case as co-counsel.

Of course, that means we still need to raise at least $250k locally. But hopefully the prospect of a matching donation and respected

national counsel will provide sufficient donor impetus.

I've been putting together a short slide deck to present to prospective donors; should have that wrapped up in coming days.

Let me know if you have any thoughts or suggestions on how to proceed.

-Drew

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From: Drew Stokesbary <drew@citizenactiondefense.org>
Date: Wednesday, April 13, 2022 at 9:08 AM
To: John Braun <JohnBraun@braunnorthwest.com>, JT Wilcox <jtwilcox111@gmail.com>, Jim Troyer <jamestroyer@comcast.net>, Caleb Heimlich <calebheimlich@wsrp.org>
Subject: Re: Status of Redistricting Litigation

Preliminary Injunction is DENIED.

Billig and Jinkins are dismissed as defendants.

Reading rest of order now.

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From: Drew Stokesbary <drew@citizenactiondefense.org>
Date: Tuesday, April 12, 2022 at 3:35 PM
To: John Braun <JohnBraun@braunnorthwest.com>, JT Wilcox <jtwilcox111@gmail.com>, Jim Troyer <jamestroyer@comcast.net>, Caleb Heimlich <calebheimlich@wsrp.org>
Subject: Re: Status of Redistricting Litigation

Fair Lines America Foundation has set up a Washington affiliate that will pay 100% of its proceeds to litigation expenses here in WA. We can provide this form to interested donors, which has check and wiring info included.

They are a 501(c)(3) organization so contributions are tax-deductible. This may also be useful for certain trusts and family foundations.

Their only request is that, to safeguard their 501(c)(3) status, that we let them review any written solicitations we might want to send.

Sent from my iPhone

On Apr 12, 2022, at 1:05 PM, Drew Stokesbary <drew@citizenactiondefense.org> wrote:

Hearing on preliminary injunction just concluded.

No decision yet, but judge said he would have an opinion issued by close-of-business tomorrow, April 13.

I'm not sure what to predict at this point, as I'm pretty sure my own internal biases and my anxiety are drowning my ability to rationally read the judge.

The judge was definitely skeptical about the makeup of the defendants.

He also wanted to mostly focus on the timing issues. I think the unfortunate news there is that the AAG representing Hobbs only gave *very* measured answers in response to timing concerns. She mostly pointed to precinct revisions that would need to take place, and seemed to say the window for counties to do that was still open for another week or two.

The judge did permit me to address some arguments for a few minutes (I wasn't timing, but it was probably more than 5 and less than 10). I got through about half of my arguments before he decided to move on (nobody else had a time limit, but of course, since the motion to intervene hasn't been granted yet, I'm not a party yet).

The one comment from the judge that concerns me deeply (and it was before I had a chance to speak) is when he said something along the lines of he agrees that "plaintiffs are likely to succeed on the merits of there being discrimination." It was kind of a throwaway line in context—it was in the middle of some other remarks in the middle of the hearing. But a "likelihood of success on the merits" is one of a few things you have to show to obtain an preliminary injunction, so I'm not sure if he was saying that he thinks plaintiffs are likely to succeed on the merits of this whole claim, or just with respect to the narrower issue of whether discrimination exists in Yakima.

So anyway, an 18 hour reprieve and then potentially another very furious appeal.

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From: Drew Stokesbary <drew@citizenactiondefense.org>
Date: Friday, April 8, 2022 at 5:03 PM
To: John Braun <JohnBraun@braunnorthwest.com>, JT Wilcox <jtwilcox111@gmail.com>, Jim Troyer <jamestroyer@comcast.net>, Caleb Heimlich <calebheimlich@wsrp.org>
Subject: Re: Status of Redistricting Litigation

Here's a *very* high level "memo" describing the litigation that could potentially be shared with donors.

Let me know what you all think. It has as much to do with the political context as the legal issues. I can add or subtract things, and/or fashion it as more of a typical "legal memo" if it seems like that would be more effective.

Btw, please don't circulate quite yet, I need to run by my board first. But wanted to get your thoughts/suggestions in the meantime.

-Drew

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From: Drew Stokesbary <drew@citizenactiondefense.org>
Date: Friday, April 8, 2022 at 1:17 AM
To: John Braun <JohnBraun@braunnorthwest.com>, JT Wilcox <jtwilcox111@gmail.com>, Jim Troyer <jamestroyer@comcast.net>, Caleb Heimlich <calebheimlich@wsrp.org>
Subject: Re: Status of Redistricting Litigation

Another (quick) update—I filed the attached response to plaintiffs' motion for preliminary injunction with the Court just now. It's as exhaustive as possible given the space constraints (and, frankly, accomplishes what a team of AAGs should have done if their clients weren't acting like political hacks).

I don't expect any more updates this week. By Monday, plaintiffs have to file any response to my motion to intervene. I expect they'll do so but their arguments are likely weak.

Then of course, Tuesday is the preliminary injunction hearing.

-Drew

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From: Drew Stokesbary <drew@citizenactiondefense.org>
Date: Tuesday, April 5, 2022 at 8:11 PM
To: John Braun <JohnBraun@braunnorthwest.com>, JT Wilcox <jtwilcox111@gmail.com>, Jim Troyer <jamestroyer@comcast.net>
Subject: Re: Status of Redistricting Litigation

I wanted to give a brief update:

As promised, last Tuesday I filed a Motion to Intervene in *Palmer v. Hobbs* (which you can read here).

Then on Friday, the Court scheduled a hearing on the Plaintiffs' Motion for Preliminary Injunction. That hearing will be next Tuesday, April 12 at 10:00 AM. As a reminder, the Plaintiffs have requested the Court (a) prohibit the Secretary of State from conducting any elections under the Commission's approved legislative maps and (b) order that plaintiffs' proposed legislative map be implemented for all elections, beginning with 2022 elections.

Although the judge has not ruled on my Motion to Intervene (and likely will not until next Friday, April 15 at the earliest), his assistant indicated that he would permit me to participate in the preliminary injunction hearing on Tuesday unless the parties strenuously object. I am also furiously working through a brief opposing preliminary injunction so that the judge will have a comprehensive written record contesting the merits of the plaintiffs' claims. I'm hoping to finish that by tomorrow.

In light of this, **we should begin fundraising urgently**:

- If the plaintiffs' request for injunction is *granted*, we would want to immediately appeal. (If we don't appeal, their map would create a safe Democratic district in Central WA for the 2022 elections, and jumble several incumbents between the 14th and 15th districts).
- If the plaintiffs' request for injunction is *denied*, they could appeal immediately and we would want to defend against that. (They have the right to an immediate appeal and other redistricting attorneys I've spoken with this week think the plaintiffs would be likely

to do so.)
- Either way, we should be prepared to participate in an immediate appeal.

I am skeptical we can retain competent appellate counsel or co-counsel on a pro bono basis. I expect any firm, large or small, will need to see at least some fundraising progress before agreeing to an engagement. I've made a small handful of preliminary inquiries, but I do not yet have any commitments. Just like how the statewide business community views the importance of a candidate's early in-district funding, it sounds like national donors to redistricting litigation prefer to see some level of in-state support before they get involved. I'm happy to help in fundraising however it's helpful, but I'm not sure I have the bandwidth, leverage or persuasiveness to do it alone.

Let me know if you have any questions, or any thoughts on next steps for this.

Best,
Drew

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From: Drew Stokesbary <drew@citizenactiondefense.org>
Date: Monday, March 28, 2022 at 10:00 PM
To: John Braun <JohnBraun@braunnorthwest.com>, JT Wilcox <jtwilcox111@gmail.com>, Jim Troyer <jamestroyer@comcast.net>
Subject: Status of Redistricting Litigation

I'm not sure what you hear from the Legislature's attorneys, but here's a comprehensive update of where both cases are at and what my litigation plans are (please keep this confidential though):

Palmer v. Hobbs (original case, spearheaded by UCLA VRP)

- On Feb. 23, Billig and Jinkins filed a motion to be dismissed as plaintiffs. Honestly they're correct and the court should grant this, but the plaintiffs filed a brief opposing it and the court hasn't issued a ruling yet.

- On Feb. 25, Plaintiffs filed a motion for preliminary injunction.
  - Hobbs, as promised, didn't dispute any of plaintiffs' VRA claims, but he at least argued that the court shouldn't stop elections and that if his office doesn't have a new map by March 28 (today), then it's too late to implement a new map done this election cycle.
  - Jinkins and Billig didn't really contest any of plaintiffs' claims either. They at least explained to the court what all the applicable legal standards were, and 1-2 times did some light pushback on what plaintiffs' said the law was. But they didn't make any effort to apply the law to the facts in the case, much less suggest any shortcomings in plaintiffs' argument. The whole thing read like a memo from an intern/summer associate trying to summarize the law for their boss.
  - Last Friday, plaintiffs filed their "reply" to the defendants' responses. For the first time, they presented an actual statewide proposal, which I've attached here. I haven't had a chance to look through it carefully yet (and I'm not even sure if they've provided it in a format other than a half-page PDF), but a cursory glance suggests they leave the westside districts intact and are just rejiggering Eastern WA boundaries.
  - Briefing on that motion closed Friday, so the court could conceivably rule on it at any point now. For reasons described below, I'm hoping they wait a little longer.

- Last Thursday, Hobbs petitioned the court to require that plaintiffs add the State itself, the Redistricting Commission, and/or the individual Commissioners as parties to the lawsuit. I'm genuinely curious how plaintiffs respond to this, because I can't think how you could argue against this with a straight face. Briefing on this closes April 8, at which point the court could issue a ruling.

- Tomorrow morning (just awaiting one signature), I'll be filing a motion to intervene on behalf of four individuals—Jose Trevino, the mayor of Granger; Elpidia Saavedra, the mayor of Toppenish; Mel Campos, the brother of Paul Campos; and Alex Ybarra. I think it's a really strong motion and will frankly be shocked if the court denies it. But assuming they grant it, we'll have a great opportunity to engage in the litigation and influence it in ways that the other parties won't. If plaintiffs ultimately fail, it will be because of us.

- I'm also working on a response brief opposing plaintiffs' motion for preliminary injunction, which hopefully I can finish before the court issues a ruling (as mentioned above, it became eligible for a ruling starting today). This will also be a strong brief. Assuming I can get it submitted before the preliminary injunction ruling, and that the injunction is denied, it will be obvious to everyone that our brief is what persuaded the court, not any of Hobbs/Billig/Jinkins' briefs.

- Once the motion to intervene is granted, I also plan to file a motion to dismiss the case. There are several grounds for this, most notably being that the VRA doesn't contain a private right of action. For years courts just assumed this, and only recently did it begin to get litigated. A federal court in Arkansas just issued a comprehensive opinion explaining why the VRA does not have a private right of action. Even if the court rejects the motion, there might still be an opportunity to appeal to the Ninth Circuit and then the Supreme Court and have it consolidated with that Arkansas case (which just got appealed to the Eighth Circuit). There's another argument too —that the VRA doesn't apply to redistricting. This is something Clarence Thomas has been writing in his concurrences/dissents for the past decade, and now Gorsuch is joining with him. While we won't win at the trial court with this argument, there's a low but nonzero chance if we get it to the Supreme Court, the conservative bloc will adopt Thomas's arguments.

- Once these initial briefs (motion to intervene, opposition to motion for preliminary injunction and motion to dismiss) are filed in the next couple of weeks, the next steps will depend largely on how the court has ruled.
  - If we lose on the preliminary injunction, we can appeal to the Ninth Circuit, and will probably want to.
  - If we win on preliminary injunction (that is, it's denied), then plaintiffs can appeal to the Ninth Circuit but they probably won't want to.
  - If we win on motion to dismiss, the other side will surely appeal to the Ninth Circuit.
  - If we lose on motion to dismiss, we don't have a right to appeal to the Ninth Circuit (the district court could, but doesn't have to, let us), but we might want to try.
  - If both motions are denied, and nobody appeals, then the case will proceed. At that point, we'll likely need to hire a statistician and/or demographer to poke holes in plaintiffs' arguments.
  - At some point, we could try to move for summary judgement. We'd certainly have a sound basis to do so, but entirely possible the court wouldn't agree. If that motion is granted, it would be appealed to the Ninth Circuit by the plaintiffs.
  - If no motion for summary judgement is granted, then at some point (currently scheduled to be early January 2023), we'd have a trial, the results of which the loser would almost certainly want to appeal.

Garcia v. Hobbs (new case, I represent Garcia)

- I filed the complaint in this case about two weeks ago.

- Legal argument is that the LD15 was drawn primarily on account of race, which violates the 14th Amendment. The practical outcome, if successful, is an order to draw new maps in Yakima area that ignore race, which would let us re-draw LD15 in a way that is much safer.

- This case is kind of in a holding pattern now.
  - Because of how aggressively UCLA plaintiffs are pursuing the *Palmer* case, and how unaggressively the present defendants are defending the case, getting involved in *Palmer* is the more urgent priority.
  - Once we get the initial round of filings taken care of in *Palmer*, I can put together a motion for preliminary injunction in *Garcia* (but given how soon elections are coming, it's unlikely to be granted).
  - A big value of having this case on the books, and complaint already written and filed, is that we could consolidate the two cases together if it's advantageous. At this point, that might happen for two reasons:
    - A federal law says that any case challenging the *constitutionality* of redistricting is entitled to be heard by a panel of 3 judges, and appeals from the panel go straight to the Supreme Court. *Palmer* is a statutory challenge, not a constitutional one, so we likely won't get a 3-judge panel. But if we consolidate the cases, we'd likely get the 3-judge panel meaning appeals go straight to the Supreme Court (which is better for us than going through the Ninth Circuit).
    - If at any point we think it would be better to have the Redistricting Commission involved in the *Palmer* case to defend the maps, the intervenors could countersue them on the same grounds as the *Garcia* complaint. Rather than asking the judge to do this (which Hobbs is doing), we could force it to happen.

To sum it all up, there's a relative flurry of motions and filings taking place now. Initial rulings on those motions could start to come in literally any day now. Depending on how those initial rulings go, there might be an immediate flurry of appellate work to do, or things might slow down as the case proceeds methodically to trial.

Happy to answer any questions (assuming they don't violate attorney-client privilege).

-Drew

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From: Troyer, James
Sent: Tuesday, May 24, 2022 7:19 AM PDT
To: @SRC Caucus
Subject: RE: These legislators are running unopposed in their districts | Tacoma News Tribune

FOR INFORMATIONAL PURPOSES ONLY

https://www.thenewstribune.com/news/politics-government/election/article261652387.html

Here are the legislative districts statewide where candidates will run unopposed

By Shauna Sowersby
May 24, 2022 5:00 AM

Primary election filings ended in Washington on Friday, after candidates were given a week to submit their bid for elected office.

While some of the state's 49 legislative districts have a field candidates vying for one elected position, other districts have little to no opposition.

Each district elects one state Senator and two Representatives running for two separate positions. Representatives serve two-year terms, so those positions are filled every even-year election. Senators serve four-year terms, so half of the Legislative Districts do not have Senate seats up for election this year.

Here are the current Legislative Districts with all or mostly unopposed races:

Legislative District 6: Sen. Jeff Holy and Rep. Mike Volz, both Spokane Republicans, face no opposition, but incumbent Republican Rep. Jenny Graham will be running against Democratic challenger Michaela Kelso.

Legislative District 7: Sen. Shelley Short, R-Addy, and Rep. Joel Kretz, R-Wauconda, are running unopposed. Incumbent House Rep. Jacquelin Maycumber, R-Republic, will face fellow Republican challenger Lonny Ray Williams.

Legislative District 9: Incumbent Republicans Rep. Mary Dye from Pomeroy and Rep. Joe Schmick from Colfax are the only candidates to file for the two House positions in their district.

Legislative District 13: Sen. Judy Warnick, R-Moses Lake, and Rep. Alex Ybarra, R-Quincy, are not facing any opposition but incumbent House Republican Tom Dent, R-Moses Lake, has one opponent, fellow Republican Ron Fode.

Legislative District 15: On Monday, 28-year state Sen. Jim Honeyford, R-Sunnyside, pulled his bid for re-election and announced his retirement when his term is over in January. He endorsed Republican Nikki Torres, who will run unopposed for his position. Incumbent House Rep. Bruce Chandler, R-Zillah, faces no opposition for his seat. While incumbent Rep. Jeremie Dufault, R-Selah, no longer lives in the 15th District because of recent redistricting, Republican Bryan Sandlin has filed unopposed for the position.

Legislative District 20: Incumbent Republican Reps. Peter Abbarno of Centralia and Ed Orcutt of Kalama have no opposition for their re-election bids.

Legislative District 33: Incumbents Sen. Karen Keiser, Rep. Tina Orwall, and Rep. Mia Gregerson, all Democrats from Des Moines, are running unopposed.

Legislative District 37: Sen. Rebecca Saldaña, D-Seattle, is not facing any opponents, but House Rep. Sharon Tomiko Santos, D-Seattle, has a Republican and a Democrat challenging her for her seat. The other position in the district will need to be filled by a newcomer since Rep. Kirsten Harris-Talley announced her departure earlier this year. Four people — three Democrats and one Republican — have filed for that seat.

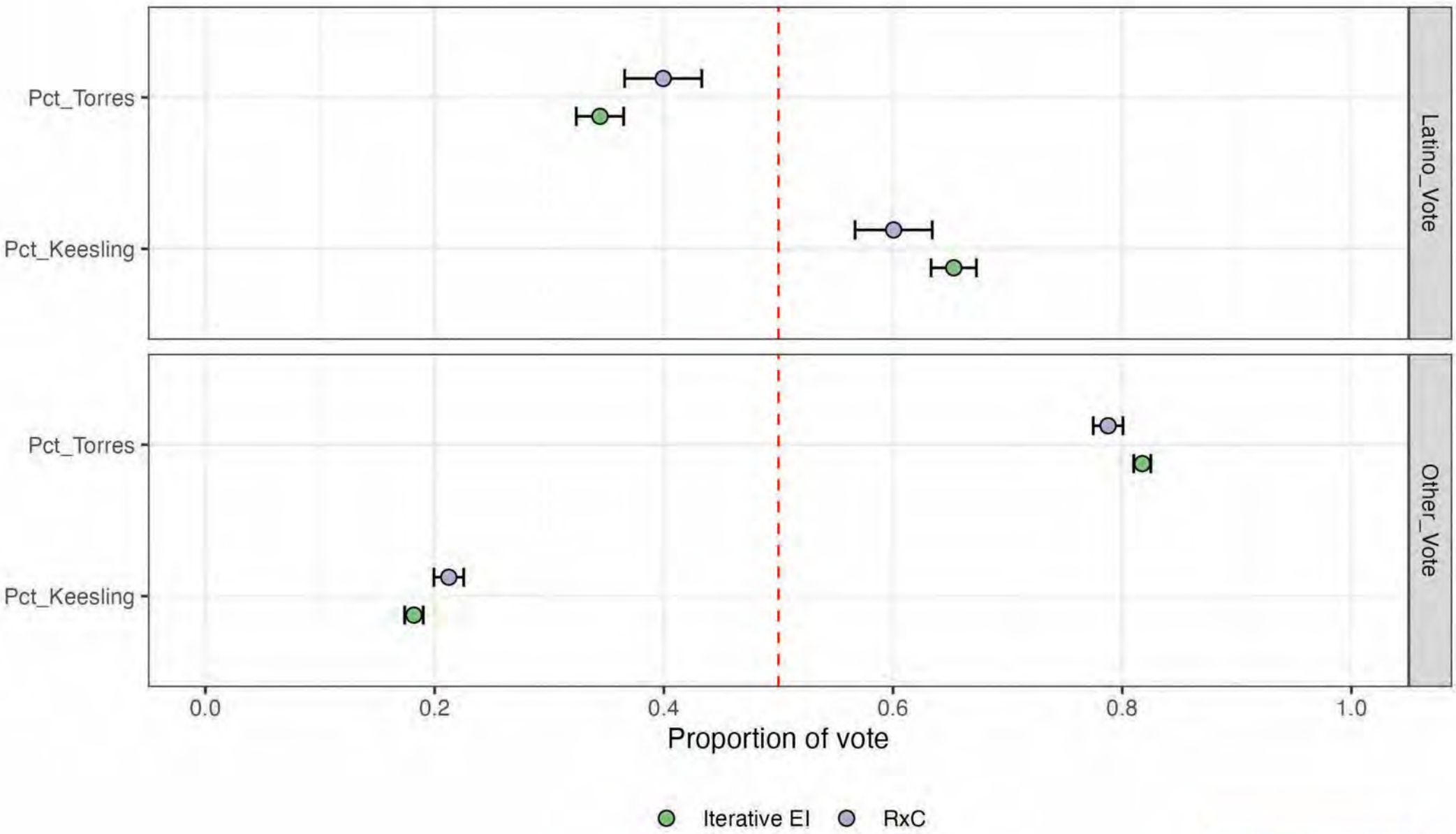
Legislative District 43: Incumbent Sen. Jamie Pedersen, Rep. Frank Chopp, and Rep. Nicole Macri, all Seattle Democrats, face no opposition.

Legislative District 48: Democratic Representatives Amy Walen from Kirkland and Vandana Slatter from Bellevue are both running unopposed, but incumbent Sen. Patty Kuderer, D-Bellevue, has Republican opposition from Michelle Darnell.

Candidates had until Monday to withdraw their names from the primary ballot.

Primary elections will be held on Aug. 2.

Shauna Sowersby was a freelancer for several local and national publications before joining McClatchy's northwest newspapers covering the Legislature.



PLAINTIFF'S EXHIBIT 417

CITIZEN ACTION DEFENSE FUND

Washington Redistricting Litigation

Factual Background

In November 2021, the Redistricting Commission approved new legislative district maps. During their deliberations, a left-wing advocacy group threatened litigation unless there was a majority-Latino district created in the Yakima Valley. As a result, the Commission reached a political compromise, drawing a Yakima-Pasco district (LD15) that was 50.02% Latino and 50.39% Republican.

Litigation Background

The group sued anyway, alleging the legislative maps violate the Voting Rights Act (VRA). They ask the court to impose a new map, beginning with the 2022 elections, that creates a 59% Democrat district in Central Washington.

The lawsuit only names three Democrat elected officials as defendants—the Secretary of State, Speaker of the House and Senate Majority Leader—none of whom were involved in drawing the original maps. The Secretary of State has notified the court he "takes no position" on the merits of the VRA claim and the Speaker and Majority Leader have moved to be dismissed as defendants. The Redistricting Commission has declined to intervene to defend their maps.

Citizen Action Defense Fund (CADF) is supporting a two-pronged legal effort. First, a group of Latino voters have filed a motion to intervene in the original case (*Palmer v. Hobbs*), where they are opposing plaintiffs' VRA claims and legal arguments. Second, another Latino voter has filed a separate lawsuit (*Garcia v. Hobbs*) alleging the 15th District is unconstitutional and should be redrawn on an entirely race-blind basis.

Legal Implications

At its absolute core, the *Palmer* case is about whether the VRA can used to mandate a particular partisan outcome. Because there is very little Ninth Circuit caselaw interpreting the VRA, failing to forcefully contest this lawsuit could result in troubling legal precedents that would apply to future Washington VRA cases.

PLAINTIFF'S EXHIBIT 437

Conversely, if *Palmer* is fully litigated, it could eventually present several legal questions to a friendly Supreme Court that would give the Court an opportunity to reshape how the VRA operates across the country. Most VRA cases involve challenges to politically-gerrymandered districts. But *Palmer* is unique in that it challenges a swing district produced through political compromise. Because there would be few equity concerns facing the Court, it could use the case as the basis to find that the VRA lacks a private right of enforcement, doesn't apply to redistricting, or even is unconstitutionally vague.

Political Implications

If *Palmer* is successful, an entire legislative district will be "flipped" for the remainder of the decade, and perhaps beyond. If both lawsuits fail, LD15 will lean Republican for the near future but become increasingly difficult to hold. If *Garcia* is successful, LD15 could be redrawn to stay reliably Republican until 2030.

Next Steps

The Court is holding a preliminary injunction hearing in *Palmer* on April 12. Whether the injunction is granted or denied, the intervenors are preparing for an immediate appeal to the Ninth Circuit. It could take 1-2 years to fully resolve both cases, but the maps for the 2022 cycle will likely be finalized by mid-May.

The total litigation budget remains indeterminate, but is currently estimated to be at least $250,000. A significant amount of legal work has already been performed, but much work remains, including drafting motions, taking depositions and preparing appellate briefs. Co-counsel as well as a statistician and/or demographer will likely need to be retained.

About CADF

CADF is a nonprofit organization dedicated to promoting free markets, limited government and the constitutional rights of all Washingtonians through strategic litigation. It is led by Drew Stokesbary (President and Director) and Paul Graves and Dann Mead Smith (both Directors).

To protect their privacy, CADF does not publicly disclose its donors, nor are we legally required to. For tax-exposed donors, CADF expects to enter into a partnership with a 501(c)(3) tax-exempt organization to help fund this litigation.

To learn more, contact Drew Stokesbary at drew@citizenactiondefense.org.

SUMMARY COMPILATION OF SIMS 10.25.21 PROPOSAL[1]

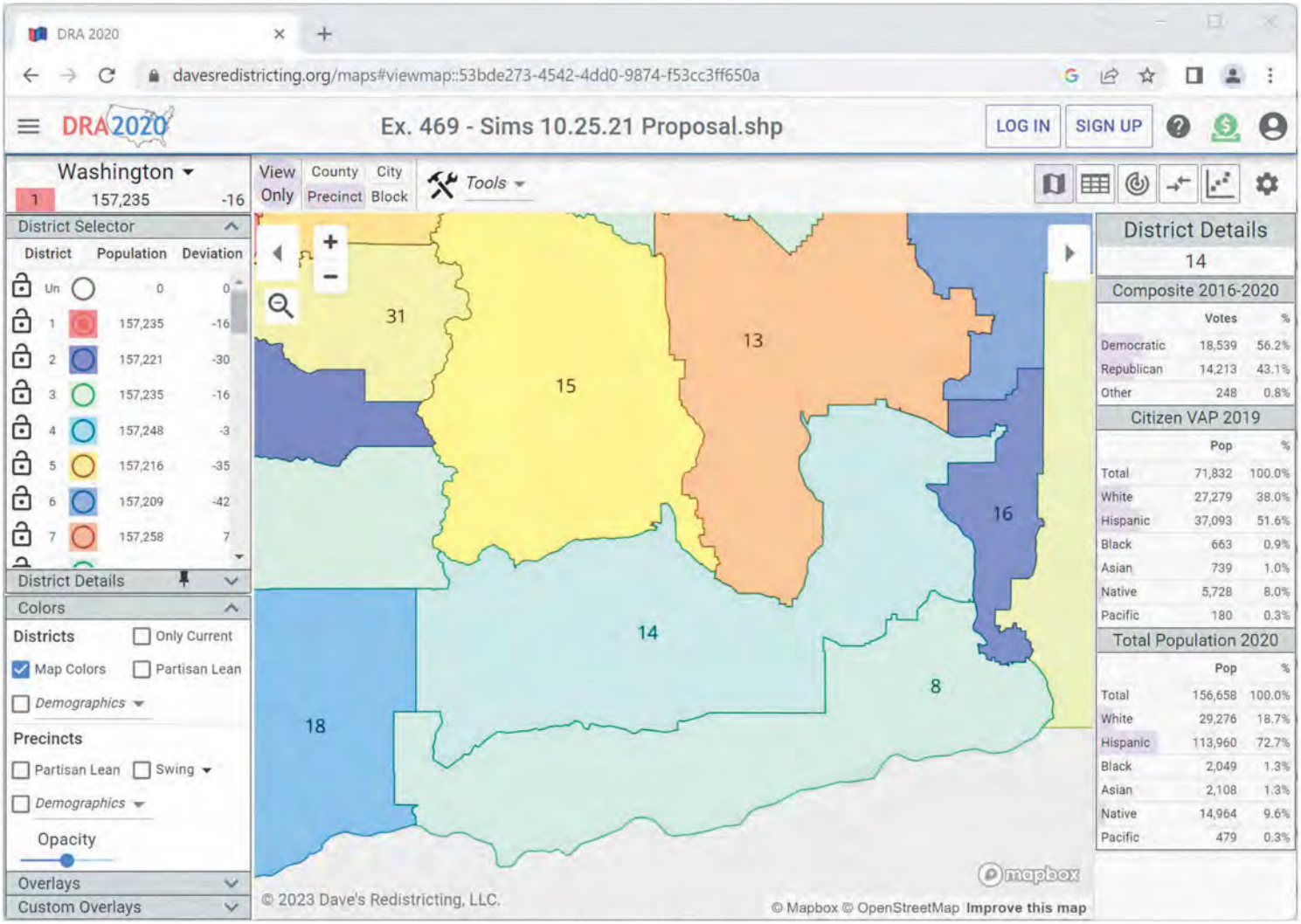
Map Information

- Map Source Data: Plaintiffs' Exhibit 469 (Sims 10.25.21 Proposal.zip, shapefile).
- Map Viewing URL on Dave's Redistricting App:[2]
  - https://davesredistricting.org/join/53bde273-4542-4dd0-9874-f53cc3ff650a

[1] Sources: Plaintiffs' Exhibit 469 (Sims 10.25.21 Proposal.zip, shapefile).
[2] URL obtained by uploading Plaintiffs' Exhibit 469 (Sims 10.25.21 Proposal.zip, shapefile) to Dave's Redistricting App, https://www.davesredistricting.org.

PLAINTIFF'S EXHIBIT 515

Screen Capture



SUMMARY COMPILATION OF WALKINSHAW 10.25.21 PROPOSAL[1]

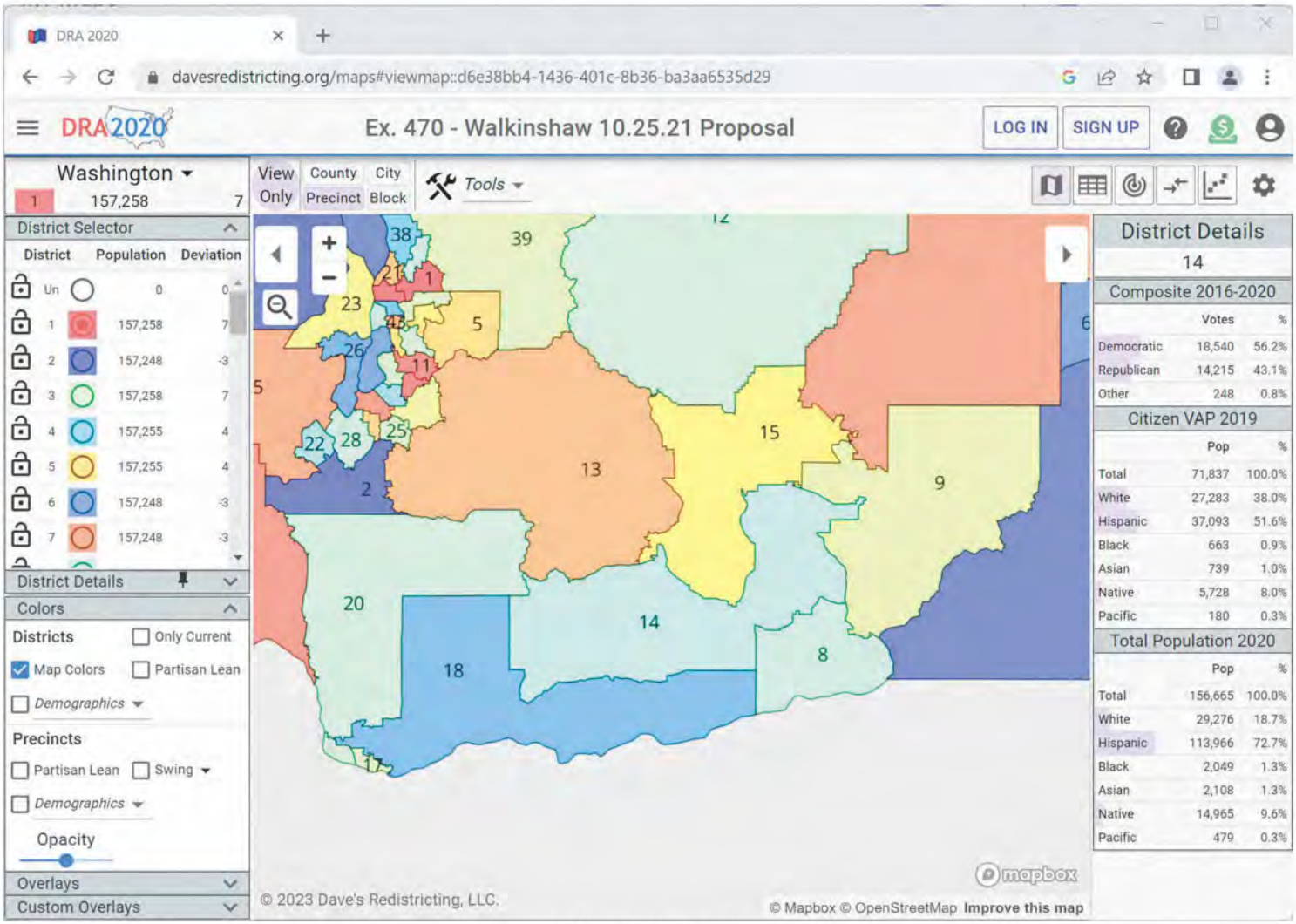
Map Information

- Map Source Data: Plaintiffs' Exhibit 470 (Walkinshaw 10.25.21 Proposal.zip, shapefile).
- Map Viewing URL on Dave's Redistricting App:[2]
  - https://davesredistricting.org/join/d6e38bb4-1436-401c-8b36-ba3aa6535d29

[1] Sources: Plaintiffs' Exhibit 470 (Walkinshaw 10.25.21 Proposal.zip, shapefile).
[2] URL obtained by uploading Plaintiffs' Exhibit 470 (Walkinshaw 10.25.21 Proposal.zip, shapefile) to Dave's Redistricting App, https://www.davesredistricting.org.

PLAINTIFF'S EXHIBIT 516

Screen Capture



PL-SER-840

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT TACOMA

BENANCIO GARCIA III,

Plaintiff,

v.

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

Defendant.

No. 3:22-cv-5152

COMPLAINT FOR THREE-JUDGE PANEL

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

I. INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

II. PARTIES

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

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

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

III. JURISDICTION AND VENUE

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

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

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

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

IV. FACTS

A. Washington State Redistricting

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

[1] "The plan approved by the commission . . . shall constitute the districting law applicable to this state for legislative . . . elections, beginning with the next elections held in the year ending in two." RCW 44.05.100. Thus, the Secretary of State administers legislative district elections based on the boundaries established by the Commission's redistricting plan.

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

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

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

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

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

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

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

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

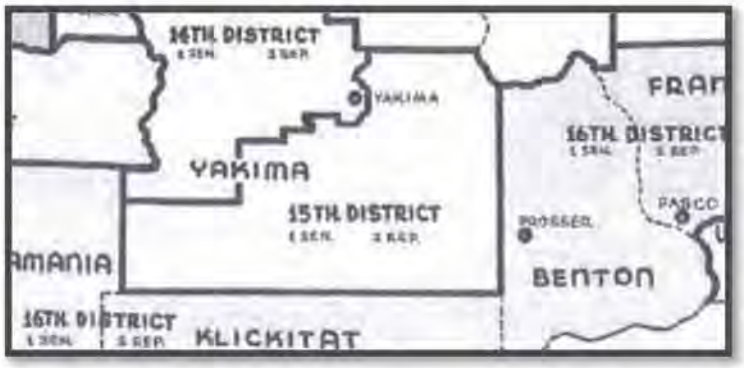
25. Following the Commission's adoption of a redistricting plan, it "shall take all necessary steps to conclude its business and cease operations . . . on July 1st of each year ending in two . . . ." RCW 44.05.110.

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

B. The History of Legislative District 15

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

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



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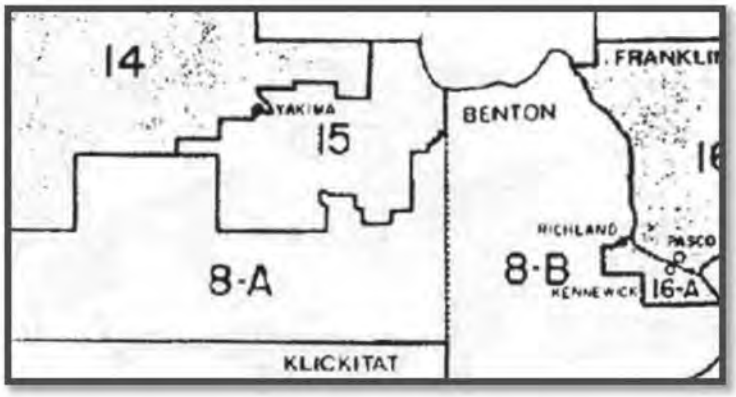
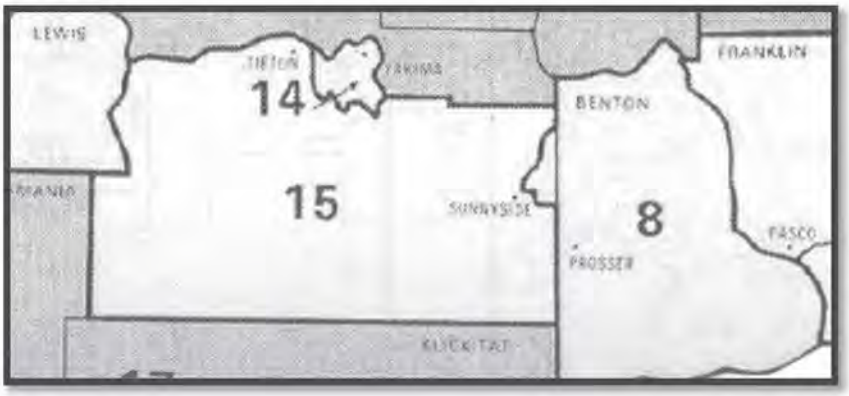
29. A map of Legislative District 15 from 1957 through 1965 is shown below. The districted included only a portion of Yakima County. *Id.* at 177.

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



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



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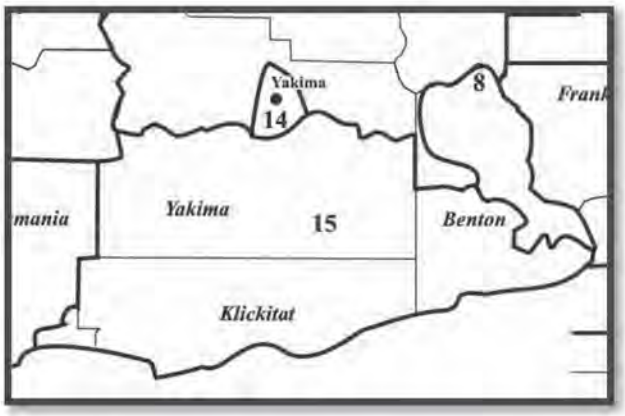
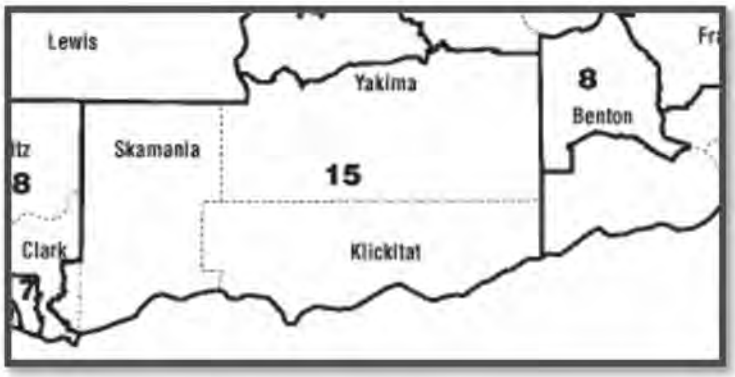
32. A map of Legislative District 15 from 1982 through 1991 is shown below. The district included portions of Yakima and Benton Counties. *Id.* at 184

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



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



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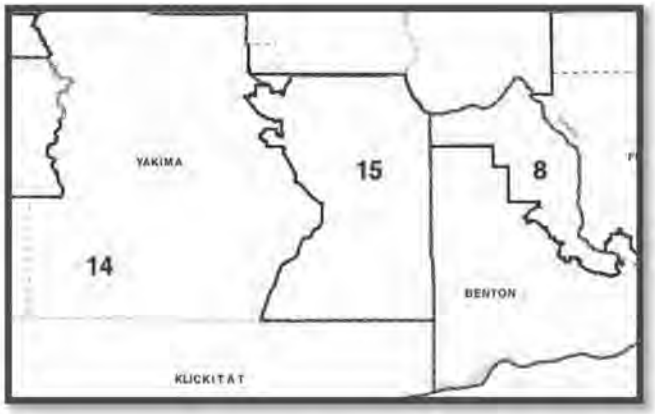
35. A map of the current version of Legislative District 15, in effect since 2012, is shown below. The district once again includes only a portion of Yakima County. *Id.* at 190.



C. The 2021 Redistricting Process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Legislative District 15 under the 2021 Plan

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

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

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

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

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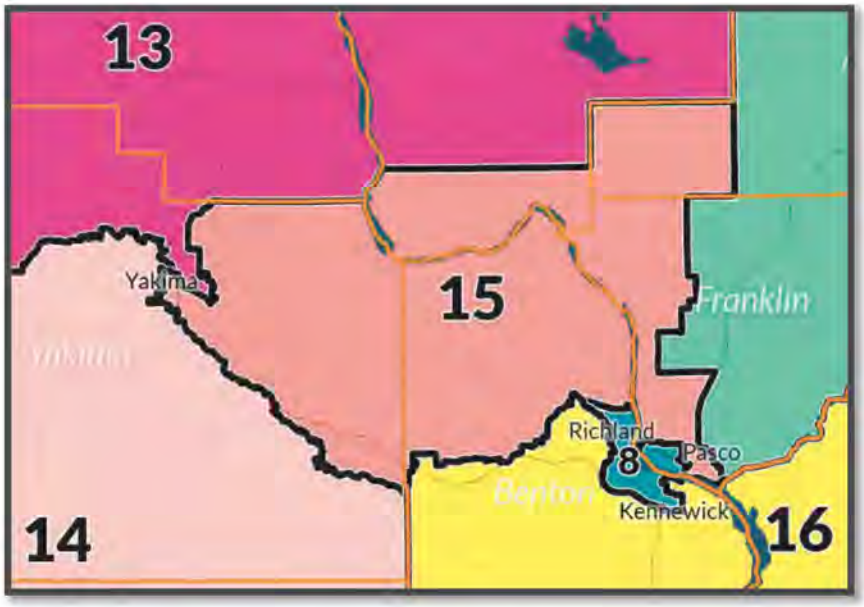
60. The map of the new Legislative District 15 as defined by the Commission's approved plan is shown below. It disregards traditional districting principles such as compactness, maintaining communities of interest, and respecting political subdivisions or geographical boundaries.



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

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

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

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

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

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

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

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

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

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

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

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

V. CLAIMS

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

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

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

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

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

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

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

VI. PRAYER FOR RELIEF

77. WHEREFORE, Plaintiff asks for the following relief:

a. Convene a court of three judges pursuant to 28 U.S.C. § 2284(a);

b. Declare that Legislative District 15 is an illegal racial gerrymander in violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution;

c. Issue a permanent injunction enjoining Defendant from enforcing or giving any effect to the boundaries of Legislative District 15, including an injunction barring Defendant from conducting any further elections for the Legislature based on Legislative District 15;

d. Order the creation of a new valid plan for legislative districts in the State of Washington that does not violate the Equal Protection Clause;

e. Award Plaintiff reasonable attorneys' fees and costs incurred in this action under 42 U.S.C. § 1988, 52 U.S.C. § 10310(e) and any other applicable law; and

f. Grant such other and further relief as this Court deems just and proper.

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DATED this 15th day of March, 2022.

Respectfully submitted,

Stokesbary PLLC
Attorney for Plaintiff

By *s/ Andrew R. Stokesbary*
Andrew R. Stokesbary, WSBA #46097

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