

No. _____

**In the
Supreme Court of the United States**

JOSE TREVINO, ET AL.,

Applicants

v.

STEVEN HOBBS, ET AL.,

Respondents.

UNOPPOSED APPLICATION DIRECTED TO THE HONORABLE
ELENA KAGAN FOR AN EXTENSION OF TIME WITHIN
WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

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To: The Honorable Elena Kagan, Associate Justice
of The Supreme Court of the United States:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.2, Applicants Jose Trevino, Ismael G. Campos, and Alex Ybarra respectfully request a 60-day extension of time, to and including January 26, 2026, within which to file a petition for writ of certiorari to review the judgment of the Ninth Circuit Court of Appeals in this case. This is an unopposed request for a 60-day extension of time. All Parties have been contacted and have stated that they do not oppose this request. The Ninth Circuit entered its judgment on August 27, 2025. Without an extension, the time for filing a petition for a writ of certiorari will expire on November 25, 2025. This application is being filed more than ten days before that date. *See* Sup. Ct. R. 13.5, 30.2.

The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1). Copies of the opinion of the court of appeals and the two relevant opinions (merits and remedy) of the district court are attached to this application.

Background

This case concerns the application and scope of Section 2 of The Voting Rights Act, 52 U.S.C. § 10301 *et seq.*, to state legislative districts in the state of Washington. Specifically, can Section 2 of the Voting Rights Act be used to justify a judicial redrawing of state legislative districts to cure an alleged dilution of Hispanic voting strength in the Yakima Valley region of central Washington by lowering the Hispanic Citizen Voting Age Population in that region?

Under Washington law, both congressional and legislative districts are drawn by an independent and bipartisan redistricting commission (the “Commission”). *See* Wash. Const. art. II, § 43; (Intervenor-Appellants Opening Br. at 9). The Commission created a map where LD-15, the district at issue in this litigation, had a 51.5% Hispanic Citizen Voting Age Population (HCVAP). (Intervenor-Appellants Opening Br. at 9-10). In the first election following the redistricting, that map elected a Latina Republican candidate, Nikki Torres, as a state senator from LD-15, with a 35.6% margin of victory, winning 67.7% to 32.1%. *Id.* at 10.

The litigation surrounding the Commission’s 2022 adopted map began almost immediately. *Id.* at 11. Eventually, the two cases filed challenging the maps were *Soto Palmer v. Hobbs*, No. 3:22-cv-5035 (W.D. Wash. Jan. 19, 2022), and *Garcia v. Hobbs*, No. 3:22-cv-5152 (W.D. Wash. Mar. 15, 2022), where a federal judge struck the Commission’s 2022 map as a violation of Section 2 of the Voting Rights Act because it diluted Hispanic voting strength in LD-15. (Intervenor-Appellants Opening Br. at 11-13). The District Court in *Soto Palmer* applied the *Gingles*

preconditions, *see Allen v. Milligan*, 599 U.S. 1, 18 (2023), holding that all three factors were satisfied by Plaintiffs. *Id.* at 14. The Court then applied step two of the *Gingles* analysis, finding that Plaintiffs demonstrated under the totality of the circumstances that the political process in Yakima Valley is not equally open to Hispanic voters. *Id.* at 14-15. The *Garcia* court, a three-judge panel, dismissed the case in light of the decision in *Soto Palmer* claiming that challenge was now moot. *Id.* at 13. One member of the panel dissented. *Id.* Eventually, the District Court adopted a map drawn by the original plaintiffs in *Soto Palmer* that not only decreased HCVAP in the Yakima Valley district, but increased the partisan performance in favor of the Democratic candidate by more than ten points from the Commission-enacted LD-15. *Id.* at 17-19. The decision in *Soto Palmer* was appealed to the Ninth Circuit, which upheld the map adopted by the District Court. *See Op.* at 31.

Relevant to Applicants' forthcoming petition for a writ of certiorari is the Ninth Circuit's summary dismissal of Applicants' arguments that the District Court's adopted map violates Section 2 of the Voting Rights Act. The Ninth Circuit went further, by upholding the map despite an Equal Protection Challenge under the Fourteenth Amendment of the U.S. Constitution. *See Op.* Because this case lies directly at the intersection between the application of the Equal Protection Clause of the Fourteenth Amendment and Section 2 of the Voting Rights Act, its resolution depends on this Court's application of Section 2. In light of this Court's recent argument in *Louisiana v. Callais*, No. 24-109 (U.S.), the application of Section 2 and the *Gingles* test in this case may no longer suffice to satisfy Constitutional scrutiny.

Thus, this Court's consideration of *Callais*, is vital to Applicants' forthcoming application for a writ of certiorari in this case and the arguments upon which it will be based.

Reasons for Granting an Extension of Time

Applicants respectfully request a 60-day extension to prepare a petition for writ of certiorari in this case. This request is unopposed by all Parties. This case involves an underlying challenge to a map under Section 2 of The Voting Rights Act, 52 U.S.C. § 10301 *et seq.*, as such, the decision of this Court in *Louisiana v. Callais*, No. 24-109 (U.S.) will have a profound effect on the outcome of this case and help determine the legal framework under which Applicants will request certiorari. Specifically, this Court requested that the parties in *Callais* submit additional briefing to address: "Whether the State's intentional creation of a second majority-minority congressional district violates the Fourteenth or Fifteenth Amendments to the U. S. Constitution." Order dated Aug. 1, 2025, *Louisiana v. Callais*, No. 24-109 (U.S. Aug. 1, 2025). The additional question in *Callais*, its argument, and resolution by this Court may be dispositive of this case. The additional briefing is completed and oral argument on the additional issue occurred October 15, 2025.

The outcome of this case depends in large part on this Court's application of Section 2 of the Voting Rights Act. How this Court applies Section 2 in *Callais*, will inform not only the basis for a petition for certiorari in this case, but the way the Ninth Circuit and every other court in the nation will apply Section 2 going forward. Because, this Court is considering the statutory provision at the heart of this case,

the ability of counsel to review the argument in *Callais* and perhaps read this Court's opinion in the case is invaluable. Moreover, the status of this case following *Callais* will nearly be determinative of *Garcia v. Hobbs*, No. 24-2603 (9th Cir. 2024), a related case which was also decided by the Ninth Circuit. Applicants' case and *Garcia* concern the same underlying facts, and this Court's decision in Applicants' case will determine how *Garcia* is to proceed, and will likely determine the outcome of *Garcia*.

A 60-day extension in this matter is warranted to allow this Court to perhaps decide *Callais* and for counsel in this matter to conduct additional research and refine the issues considering this Court's decision. An extension will ensure that vital issues decided by this Court are appropriately raised in the petition for writ of certiorari.

Conclusion

Applicants respectfully request that the time to file a writ of certiorari in the above captioned matter be extended 60 days to an including January 26, 2026.

Dated this 24th day of October 2025.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Jason B. Torchinsky, a member of the Bar of this Court and counsel of record for Applicants, hereby certify that on October 24, 2025, I caused a copy of this Unopposed Application Directed To The Honorable Elena Kagan For An Extension Of Time Within Which To File A Petition For A Writ Of Certiorari To The U.S. Court of Appeals for the Ninth Circuit in the above-captioned case to be mailed, first-class postage prepaid, to:

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Additionally, in accordance with Supreme Court Rule 29.3, an electronic version of the Unopposed Application Directed To The Honorable Elena Kagan For An Extension Of Time Within Which To File A Petition For A Writ Of Certiorari To The U.S. Court of Appeals for the Ninth Circuit was transmitted to the above-listed counsel at the referenced email address.

I further certify that all parties required to be served have been served.

Dated this 24th day of October 2025.

Respectfully submitted,



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APPENDIX A

FOR PUBLICATION

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

SUSAN SOTO PALMER; ALBERTO
MACIAS; FABIOLA LOPEZ; CATY
PADILLA; HELIDORA MORFIN,

Plaintiffs - Appellees,

v.

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

Defendants - Appellees,

JOSE A. TREVINO; ISMAEL G.
CAMPOS; ALEX YBARRA,

*Intervenor-Defendants -
Appellants.*

Nos. 23-35595
24-1602

D.C. No.
3:22-cv-05035-
RSL

OPINION

Appeal from the United States District Court
for the Western District of Washington
Robert S. Lasnik, District Judge, Presiding

Argued and Submitted March 27, 2025
Seattle, Washington

Filed August 27, 2025

Before: M. Margaret McKeown, Ronald M. Gould, and
John B. Owens, Circuit Judges.

Opinion by Judge McKeown

SUMMARY*

Voting Rights

In appeals brought by three Yakima voters who intervened before the district court to challenge the district court's decisions (1) enjoining the Washington State redistricting commission's legislative district map for the state's Yakima Valley Region (Enacted Map) and (2) imposing a new legislative map in its place (Remedial Map), the panel affirmed in part the district court's remedial order and judgment and dismissed in part the appeals for lack of jurisdiction.

Plaintiffs sued the State of Washington and its Secretary of State, arguing that the commission's Enacted Map violated Section 2 of the Voting Rights Act. Their lawsuit was successful, such that the district court enjoined the Enacted Map. After the redistricting commission declined to craft a new map, the court did so itself by fashioning the Remedial Map. None of the original parties sought to disturb the district court's decision. Instead, Intervenor

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

appealed, challenging the district court's Section 2 liability determination pertaining to the Enacted Map, and also alleging that the Remedial Map violated the Equal Protection Clause of the Fourteenth Amendment and Section 2.

The panel first held that the district court properly exercised jurisdiction over the Voting Rights Act challenge to the Remedial Map. The panel rejected the Intervenor's assertion that 28 U.S.C. § 2284 requires a three-judge district court for a statutory challenge to redistricting, holding that Section 2284's plain language, the relevant interpretive canon, and the statutory history confirm that in the absence of congressional guidance, a three-judge district court needs to be convened only for constitutional challenges, not statutory challenges, to legislative apportionment.

Addressing standing, the panel first held that Intervenor lacked standing to appeal the district court's liability finding pertaining to the Enacted Map because they failed to show that their alleged gerrymandering injuries were traceable or redressable; Intervenor failed to provide evidence that the district court classified them on the basis of race and also failed to allege a real and immediate threat of repeated injury. Next, Intervenor lacked standing to appeal the Remedial Map as violating Section 2 because they failed to adequately allege vote dilution. One intervenor, however, had standing to bring an equal protection challenge against the Remedial Map because his asserted racial-classification injury of being moved between legislative districts was a cognizable harm in the context of a racial gerrymandering claim, and the vacatur of the Remedial Map could redress his ongoing representation harm.

Exercising its discretion to address the merits despite Intervenor's likely forfeiture, the panel held that the district

court's Remedial Map did not discriminate on the basis of race in violation of the Equal Protection Clause. Intervenor failed to demonstrate that race was the predominant factor motivating the district court's decisions. Rather, the district court's thoughtful attention to the details of the maps, population and voter numbers, and viable alternatives confirmed that race was not the predominant factor in shaping the map.

The panel dismissed the appeal of the liability order pertaining to the Enacted Map for lack of jurisdiction. The panel further dismissed the appeal of the remedial order and judgment pertaining to the Remedial Map for lack of jurisdiction, except for the district court's dismissal of Intervenor's equal protection claims, which the panel affirmed.

COUNSEL

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Sam Spiegelman and Jackson Maynard, Citizen Action Defense Fund, Olympia, Washington, for Amicus Curiae Citizen Action Defense Fund.

Paul Graves, Auburn, Washington, for Amici Curiae Sarah Augustine, Joe Fain, and Paul Graves.

Ruth M. Greenwood and Samuel Davis, Election Law Clinic, Harvard Law School, Cambridge, Massachusetts, for Amicus Curiae Latino Community Fund of Washington State.

OPINION

McKEOWN, Circuit Judge:

In the last four years, there have been two consecutive attempts to ensure that all voters in Washington State’s Yakima Valley could cast votes of equal weight. The state’s redistricting commission tried first in 2021, as part of the statewide reapportionment process that occurs every ten years. This appeal centers on the second effort: After enjoining the part of the commission’s map corresponding to the Yakima Valley region, a federal district court imposed a new map in place of the original. On appeal, we address certain challenges to the district court’s remedial map.

The case comes to our court in an unusual posture. Susan Soto Palmer and a group of Latino voters in the Yakima Valley sued the State of Washington and its Secretary of State, Steven Hobbs, arguing that the commission’s map violated Section 2 of the Voting Rights Act. Their lawsuit was successful, such that the district court enjoined the enacted map. After the redistricting commission declined to craft a new map, the court did so itself. The State chose to accept the new map rather than appeal. Consequently, none of the original parties sought to disturb the district court’s decision.

Instead, three Yakima Valley voters, after permissively intervening before the district court, now challenge both the liability determination and the new remedial map. They argue that the liability determination against the commission’s enacted map, as well as the remedial map, violated the Equal Protection Clause of the Fourteenth Amendment and Section 2 of the Voting Rights Act. They also challenge the district court’s jurisdiction.

After determining that the district court had jurisdiction, we conclude that the Intervenors lack standing to challenge the district court's liability determination. They also lack standing to challenge the remedial map under Section 2. However, at least one Intervenor has standing to challenge the remedial map under the Fourteenth Amendment. Despite Intervenors' likely forfeiture of the equal protection argument, we exercise our discretion to consider the issue. In sum, the district court's remedial map did not discriminate on the basis of race in violation of the Equal Protection Clause, and we affirm the district court.

Background

As required by the Constitution, the U.S. Census is conducted every ten years. The updated numbers of residents are used to ensure that each federal and state district within the states have approximately the same number of people, in accordance with constitutional equal-population requirements. Thus, the Census regularly catalyzes redistricting efforts, and the latest Census—conducted in 2020—was no different.

Washington State requires that its federal and state legislative districts be drawn by a five-member, bipartisan, independent redistricting commission ("Commission"). After the 2020 Census, new members were appointed to the Commission according to the procedures laid out in the state constitution: The majority and minority leaders in both legislative houses each appointed one of the four voting Commissioners, and the four voting Commissioners then voted to appoint the nonvoting chair. The Commission was tasked with agreeing by majority vote on a new legislative map for the state by November 15, 2021.

The 2020 Census data for Washington State showed significant population growth in the Yakima Valley, a region in central Washington known for its agriculture, particularly fruit production. During the Commission's map negotiations, a debate arose among the Commissioners over whether and how the districts in the Yakima Valley needed to be altered to comply with the Voting Rights Act. At the center of this debate was the area including and to the east of the Yakama Nation Reservation, which would become Legislative District 15 ("LD 15").

On November 16, 2021, the Commission unanimously approved a new legislative district map ("the Enacted Map"). The Legislature adopted the map, with minor adjustments, in February 2022.

Susan Soto Palmer and other voters in Washington State's Yakima Valley ("collectively Soto Pamer") filed suit against Washington State and its Secretary of State ("the State"), alleging that the Enacted Map, especially the configuration of LD 15, diluted their votes and deprived them of an equal opportunity to elect the candidates of their choice, in violation of Section 2 of the Voting Rights Act.

Jose Trevino, Alex Ybarra, and Ismael Campos ("Intervenors") were granted permissive intervention by the district court. Trevino is a Latino voter who was re-sorted from LD 15 under the Enacted Map to the new LD 14 under the district court's remedial map. Ybarra is a Washington state legislator representing LD 13 and also a voter in that district. Campos is a registered Latino voter in LD 8.

After conducting a four-day bench trial, the district court determined that Latinos in the Yakima Valley formed a geographically compact community of interest. According to the district court, the boundaries of LD 15 illegally

“cracked”¹ that community, thereby depriving them of an equal opportunity to elect candidates of their choice in violation of Section 2.

The district court then requested that the Commission draw a remedial district. When the Commission “declined,” the court drew its own map, relying in part on briefs and remedial proposals from Soto Palmer. Intervenor and the State elected not to submit any proposed maps by the court’s deadline. Later, Intervenor offered a map that failed to remedy the Section 2 violation. The court considered this proffered map despite its untimeliness. Intervenor offered feedback on the proposed maps, which Soto Palmer revised in response. Upon learning that Soto Palmer’s Map 3A was the court’s likely preferred alternative, Intervenor requested an evidentiary hearing. Following a hearing, the court imposed an adjusted version of Map 3A, known as Plaintiffs’ Map 3B (the “Remedial Map”). Intervenor timely appealed, seeking to vacate the Remedial Map. That appeal was consolidated with Intervenor’s earlier timely appeal on liability. We have jurisdiction under 28 U.S.C. § 1291.

Analysis

I. District Court’s Jurisdiction

We begin with Intervenor’s challenge to the district court’s jurisdiction. Although Intervenor conceded below that a single-judge court could hear Soto Palmer’s statutory claims, Intervenor now argue that the single-judge district court lacked jurisdiction. They claim that 28 U.S.C. § 2284 requires a three-judge panel for statutory as well as

¹ “Cracking means dividing a party’s supporters among multiple districts so that they fall short of a majority in each one.” *Gill v. Whitford*, 585 U.S. 48, 55 (2018) (quoting allegations in the complaint).

constitutional challenges to state legislative districts. Section 2284(a) provides: “A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.” Intervenor read the phrase “the constitutionality of” to modify only “the apportionment of congressional districts,” and not “the apportionment of any statewide legislative body.” Thus, in their view, Section 2284 requires that statutory as well as constitutional challenges to the apportionment of state legislative districts be heard by three judges, not one.

We do not share Intervenor’s strained interpretation of Section 2284’s plain language. The most natural reading is that a three-judge district court must be convened to hear a statutory challenge when such a court is “required by Act of Congress.” And, in the absence of such congressional guidance, a three-judge district court must be convened only for a constitutional challenge to legislative apportionment, whether state or federal.

Although the text is unambiguous, the relevant interpretive canon corroborates our reading of the statute. The series-qualifier canon instructs that “[w]hen several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all.” *Porto Rico Ry., Light & Power Co. v. Mor*, 253 U.S. 345, 348 (1920). Under this principle, “the constitutionality of” should be read to apply to “the apportionment of any statewide legislative body” as well as to “the apportionment of congressional districts.” *See*

Thomas v. Reeves, 961 F.3d 800, 803 (5th Cir. 2020) (en banc) (Costa, J., concurring).

The statutory history further buttresses our interpretation of the text. Historically, general provisions for three-judge district courts concerned only constitutional questions. *See* Act of March 3, 1911, ch. 321, 36 Stat. 1162 (requiring that any interlocutory injunction against a state statute issued “upon the ground of the unconstitutionality of such statute” be “heard and determined by three judges”); Act of February 13, 1925, ch. 229, 43 Stat. 938 (extending the three-judge requirement to “the final hearing in such suit in the district court”); Act of August 24, 1937, ch. 754, 50 Stat. 752 (creating a three-judge procedure for “interlocutory or permanent injunction[s]” against “any Act of Congress upon the ground that such Act or any part thereof is repugnant to the Constitution of the United States”).

In 1948, Congress consolidated general references to the three-judge procedure into a single short chapter—Chapter 155—of the U.S. Code. *See* Act of June 25, 1948, ch. 646, 62 Stat. 968. Section 2281, mirroring the Act of 1911, barred single district court judges from issuing injunctions for constitutional reasons against state statutes. 28 U.S.C. § 2281 (injunction “upon the ground of the unconstitutionality of such statute”) (repealed 1976). Section 2282, mirroring the Act of 1937, did the same for federal statutes. 28 U.S.C. § 2282 (“for repugnance to the Constitution of the United States”) (repealed 1976). Sections 2281 and 2282 required that applications for such constitutional injunctions be “heard and determined by a district court of three judges under section 2284 of this title.” *Id.* Section 2284 incorporated external statutory directives by noting that “any action or proceeding required by Act of

Congress to be heard and determined by a district court of three judges” would follow its procedures.² *Id.*

In 1976, Sections 2281 and 2282—related to constitutional injunction of federal and state statutes—were repealed. Concurrently, Section 2284 was amended to the current text now in dispute: “A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.” The first clause in the statute continued the function of Section 2284 as it had been since 1948—to ensure that three-judge courts required by an act of Congress would uniformly follow the congressionally-mandated procedures. The second clause of the statute, though narrowing the general requirement for three-judge courts to only apportionment challenges, is best read to otherwise reflect the historic constitutional focus of Sections 2281 and 2282 and their predecessors.

Thus, since the inception of the three-judge court, its convocation has been generally required only for constitutional challenges, or as otherwise specifically required by explicit directive in a separate statute. More than a century of statutory evolution underscores the consistency

² Such independent directives appeared, for instance, in a statute designed to expedite antitrust suits, Act of February 11, 1903, ch. 544, 32 Stat. 823; a statute providing for judicial review of orders of the Interstate Commerce Commission, Act of June 29, 1906, ch. 3591, 34 Stat. 584, 592; and (of special interest here) Sections 4, 5, and 10—but not Section 2—of the Voting Rights Act. Pub. L. 89-110, 79 Stat. 437 §§ 4(a), 5, 10(c) (directing actions pursuant to those subsections to be “heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code”).

of this approach, including in the modern Section 2284. The action in the district court was undisputedly a statutory one. The district court’s decision “deal[t] only with the Section 2 claim.” (Even though Intervenors now raise constitutional issues on appeal, that does not transform what was before the district court below.) Intervenors cannot, of course, point to any “Act of Congress” that requires actions under Section 2 of the Voting Rights Act to be undertaken by a three-judge court under the procedures of Section 2284. In the absence of such a congressional mandate, “a district court of three judges” under Section 2284 is not required for a statutory challenge to the apportionment of state legislative bodies.

No court has adopted Intervenors’ reading. On the contrary, the Supreme Court has affirmed the judgment of a single-judge district court in a Section 2 challenge to a state legislative apportionment scheme. *See Allen v. Milligan*, 599 U.S. 1, 16 (2023) (noting that the actions involving constitutional challenges “were consolidated before [a] three-judge Court . . . while [a statutory challenge] proceeded before Judge Manasco on a parallel track”). There, as here, the single-judge district court had jurisdiction over the action.

II. Standing

We now assess whether Intervenors have standing to bring this appeal. Intervenors allege racial gerrymandering under the Equal Protection Clause of the Fourteenth Amendment, as well as vote dilution under Section 2 of the Voting Rights Act, and they challenge both the liability determination and the Remedial Map. “We consider [each Intervenor’s] standing on a claim-by-claim basis.” *Valley Outdoor, Inc. v. City of Riverside*, 446 F.3d 948, 952 (9th Cir. 2006).

A. Standing as to the Liability Determination

Given the absence of traceability and redressability, none of the Intervenor has standing to challenge the liability determination.

Trevino, the voter who was re-sorted from LD 15 under the Enacted Map to the new LD 14 under the Remedial Map, alleges an injury of racial classification. In the context of a racial-gerrymandering claim, “racial classification itself is the relevant harm.” *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 38 (2024). Trevino also alleges that he is suffering ongoing injury from “special representational harms” inflicted because of that classification. *United States v. Hays*, 515 U.S. 737, 745 (1995).

To sustain standing, Trevino’s alleged injuries must be “fairly traceable to the judgment below”—that is, each judgment he challenges here: the liability determination and the injunction. *West Virginia v. EPA*, 597 U.S. 697, 718 (2022) (emphasis omitted) (quoting *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 433 (2019)). An injury is fairly traceable if “the links in the proffered chain of causation are not hypothetical or tenuous and remain plausible.” *Idaho Conservation League v. Bonneville Power Admin.*, 83 F.4th 1182, 1188 (9th Cir. 2023) (quoting *Ass’n of Irrigated Residents v. EPA*, 10 F.4th 937, 943 (9th Cir. 2021)).

Curiously, Intervenor has not provided any evidence that, in reaching its liability determination, the district court classified them based on their race. They barely argue that the determination classified anyone. After all, in racial classification cases, plaintiffs typically allege that “race predominated in the drawing of a district.” *Alexander*, 602 U.S. at 38 (emphasis added). Trevino did not plausibly allege

that the district court, in determining that the Enacted Map violated Section 2, used race, classified Trevino by race, or treated him unequally based on his race. Nor has Trevino alleged that the liability determination “required [him] to do anything or to refrain from doing anything” because of his race or otherwise. *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 385 (2024).

In the absence of evidence, Intervenors resort to the rhetoric that Trevino’s injury is traceable to the liability determination, because racial classification is “inherent to Section 2 remedies” and so “inexorably” results from Section 2 liability determinations. We disagree.

While in many cases redistricting implicates racial considerations, those challenges rest on “unequal treatment,” *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 228 (1995), or a constitutionally prohibited “use of race,” *Miller v. Johnson*, 515 U.S. 900, 914 (1995); *see also* Stephen Menendian, *What Constitutes A “Racial Classification”?: Equal Protection Doctrine Scrutinized*, 24 Temp. Pol. & Civ. Rts. L. Rev. 81, 85 (2014) (“[I]t is the further *use* of [racial] classification . . . that generally raises constitutional concerns.”). This general principle holds in the racial-gerrymandering context, where standing is accorded citizens who are “able to allege injury as a direct result of having personally been denied equal treatment.” *Hays*, 515 U.S. at 746 (cleaned up). Even if it is possible to trace a racial-classification injury to a liability determination, Trevino has not done so, because he has not plausibly alleged that the specific method or substance of that determination somehow made race-based treatment in the remedial phase more likely. Because Trevino’s alleged harm arose only from the alleged use of race in crafting the

Remedial Map and bears no connection to the liability judgment, he lacks standing to challenge the latter.³

Ybarra, the Washington state legislator, alleges two harms: increased campaign expenditures and reduced chances of reelection. At the time of this appeal, the 2024 election for the Washington state legislature had not yet occurred.

Ybarra's past harms do not support his standing. Because the Intervenor seeks only prospective relief, harms Ybarra suffered in the 2024 election are past and cannot support his standing. Ybarra is not "seek[ing] a remedy that redresses [his] injury." *Uzuegbunam v. Preczewski*, 592 U.S. 279, 282 (2021).

As for his alleged future harms, Ybarra has not demonstrated "a sufficient likelihood that he will again" potentially suffer increased campaign expenditures. *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983). He has not declared any intention of running again for state legislative office, and even if we could divine such an intent, Ybarra

³ There are additional reasons to view Intervenor's traceability argument with skepticism. At the close of the liability phase, Trevino's assertions of future racial classification were purely speculative. As the State put it, "there were lots of ways the district court could have enacted a remedy that didn't affect Mr. Trevino in the slightest." Importantly, the district court's challenged resolution in the remedial process—the conduct giving rise to Intervenor's alleged harms—was not foreseeable or on the table at the time of the liability determination. Upon making its liability determination, the district court requested that the state redistricting commission take up the task of drawing a remedial map. The anticipated remedy flowing from the liability determination was a baton-pass to an independent decisionmaker. The liability finding was just that—striking down a portion of the map but with no resolution as to how the map would end up.

has provided no reason to believe that increased expenditures associated with meeting new constituents on an expedited timeline will persist. Constituents who were unfamiliar to him leading up to the 2024 election have since become familiar to him, and they will remain familiar in 2026 and beyond.

An unfounded concern regarding an unspecified future election, in which Ybarra may not even participate, does not allege a “real and immediate threat of repeated injury.” *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007) (en banc) (quoting *O’Shea v. Littleton*, 414 U.S. 488, 496 (1974)).

The claim that Ybarra’s chances of reelection may be reduced does not support standing as to the liability determination, because it is not traceable to that judgment. Intervenors proffered hardly any chain of causation leading back to the liability order, let alone a “plausible” one. *Idaho Conservation League*, 83 F.4th at 1188. Ybarra’s alleged electoral disadvantage—a 0.64% decrease in the Republican lean of his district, from 63.85% to 63.21%—flows from which constituents were subsequently sorted into and out of LD 13. The liability order had no assured impact whatsoever on LD 13. Nor did the order determine which of LD 13’s constituents might be removed or which constituents from other districts might be added. Any chain of causation from the liability determination to Ybarra’s injury is too tenuous to support standing.

Intervenors declined to defend the standing of Campos, the voter in LD 8. Unlike Trevino, Campos does not allege that he was resorted into a different district under the Remedial Map. Having provided no clue as to what harm he might have suffered, Campos does not have standing.

B. Standing as to the Remedial Map

Standing as to the Remedial Map also poses a roadblock for Intervenor. No Intervenor has standing to challenge the Remedial Map under Section 2. However, at least one Intervenor, Trevino, does have standing to challenge the Remedial Map under the Fourteenth Amendment.

1. No Intervenor has standing to bring a challenge against the Remedial Map under Section 2

Intervenors seek to challenge the Remedial Map as an illegal remedy under Section 2. We note at the outset that Intervenor has not brought their own Section 2 claim. In fact, Intervenor's Section 2 arguments contradict the heart of their position. Throughout this litigation, they have strenuously denied that Section 2 applies at all to the Yakima Valley—contesting every one of the district court's findings regarding the *Gingles* preconditions.⁴ To now seek to utilize Section 2 is strange indeed. Even if their attempt is made in good faith, it fails.

Intervenors do not have a freestanding right to attack the district court's remedial decision. *See Diamond v. Charles*, 476 U.S. 54, 68 (1986). Because no other party joins them in

⁴ The Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986), developed a framework for evaluating claims brought under Section 2 of the Voting Rights Act. Plaintiffs alleging a Section 2 violation must first satisfy three “preconditions,” *id.* at 50: first, whether the minority group is sufficiently compact and numerous to have “the potential to elect a representative of its own choice in some single-member district,” *Grove v. Emison*, 507 U.S. 25, 40 (1993); second, whether the minority population has “expressed clear political preferences that are distinct from those of the majority,” *Old Person v. Cooney*, 230 F.3d 1113, 1121 (9th Cir. 2000) (citation omitted); and third, whether the majority votes sufficiently as a bloc “usually to defeat the minority’s preferred candidate,” *id.* at 1122 (quoting *Gingles*, 478 U.S. at 51).

this appeal, Intervenor must demonstrate that they individually satisfy the requirements of Article III. *Id.*; see also *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 64 (1997) (standing on appeal “in the place of an original defendant, no less than standing to sue, demands that the litigant possess a direct stake in the outcome” (internal marks and citations omitted)). As usual, Intervenor must make this showing claim-by-claim. *Valley Outdoor, Inc.*, 446 F.3d at 952.

Intervenor does not endeavor to justify their standing with respect to the Remedial Map. They have failed to adequately allege the only injury that supports a Section 2 claim. “Under [Section] 2, by contrast [to the equal protection context], the injury is vote dilution.” *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433 (2006). At most, Intervenor merely imply an injury of vote dilution. The only evidence proffered tending to show vote dilution is that the Hispanic Citizen Voting-Age Population (“HCVAP”) declined slightly, from 52.6% in the Enacted LD 15 to 50.2% in the Remedial LD 14. But a vote dilution claim in the redistricting context involves a holistic analysis of the relative opportunities for political participation of various groups, considering the specific political dynamics of a given region. Taken alone, the bare assertion of a marginally diminished group is not enough to show, let alone permit reasonable inference of any change in the effectiveness of any Intervenor’s vote or other individualized disadvantage to any Intervenor’s political participation. The Supreme Court has repeatedly reiterated that voters of a particular race cannot be assumed to “think alike, share the same political interests, [or] prefer the same candidates at the polls.” *Shaw v. Reno* (“*Shaw I*”), 509 U.S. 630, 647 (1993). We decline to infer from Intervenor’s allegations that the vote of Jose

Trevino, the only Intervenor who lives in the new LD 14, has been diluted merely because he is Hispanic and will now vote alongside fewer Hispanics.

2. At least one Intervenor has standing to bring an equal protection challenge against the Remedial Map.

Trevino’s asserted racial-classification injury is a cognizable harm in the context of racial gerrymandering, as is any representational harm that may flow from such classification. *Alexander*, 602 U.S. at 38; *Hays*, 515 U.S. at 745. The alleged classification occurred when Trevino was “specifically moved from Enacted LD 15 to Remedial LD 14” under the district court’s Remedial Map. Contrary to Soto Palmer’s arguments, the standing analysis does not require us to decide whether the Remedial Map actually classified voters by race; that is a question left to analysis on the merits.

Trevino’s grievance is sufficiently individualized under *Hays*, which requires only that the party reside in an allegedly racially gerrymandered district. 515 U.S. at 744–45. No one disputes that Trevino’s change from one district to the other is traceable to the Remedial Map. And the remedy Trevino seeks—vacatur of the Remedial Map—could redress his ongoing representational harms as a registered voter in LD 14. *See Shaw v. Hunt* (“*Shaw II*”), 517 U.S. 899, 904 (1996) (concluding that registered voters and residents of a district subject to a racial-gerrymandering claim had standing to seek prospective relief). Trevino therefore has standing to bring an equal protection claim against the Remedial Map. Because Trevino has standing on this claim, we need not assess standing for either Ybarra or Campos. *Rumsfeld v. Forum for Acad. & Institutional Rts.*,

Inc., 547 U.S. 47, 52 n.2 (2006) (“[T]he presence of one party with standing is sufficient to satisfy Article III’s case-or-controversy requirement.”).

III. Forfeiture

Although Trevino has standing to bring an equal protection challenge against the Remedial Map, he may have forfeited that challenge by failing to make it in the district court. It is well established that “we generally will not consider arguments raised for the first time on appeal, although we have discretion to do so.” *In re Am. W. Airlines, Inc.*, 217 F.3d 1161, 1165 (9th Cir. 2000).

Intervenors argue that they preserved their equal protection challenge by asserting their Fourteenth Amendment rights in their statement of interest seeking intervention. Notably, that argument was not directed at the Remedial Map—not could it have been—because the map had not yet been drawn. Intervenors also claim that they made an equal protection argument at the evidentiary hearing on Map 3A, which the district court granted at Intervenors’ request. But the hearing transcript reflects only one question about whether Soto Palmer’s map-drawing expert “kn[e]w if [P]laintiffs’ counsel consulted any racial or political data.” Taken alone, this single inquiry is insufficient to preserve the equal protection argument.

At oral argument, Intervenors complained that they had little time to raise an equal protection argument during the remedial phase. In fact, they had plenty of opportunities. They could have raised the issue at the hearing on Map 3A, among their multiple written objections to Soto Palmer’s map proposals, or as part of the presentation of their own alternative map. Even after the district court selected Map

3B as the Remedial Map, they could have moved to amend or set aside the judgment. But they did not.

That said, “[t]he matter of what questions may be taken up and resolved for the first time on appeal is one left primarily to the discretion of the courts of appeals, to be exercised on the facts of individual cases.” *Singleton v. Wulff*, 428 U.S. 106, 121 (1976). There is “no general rule,” but “a federal appellate court is justified in resolving an issue not passed on below . . . where injustice might otherwise result.” *Id.* (internal marks and citation omitted). Despite the deficiencies in Intervenor’s equal protection challenge, we recognize that this case is suffused with concerns about equal treatment under the law. In our view, given the nature of the challenge, an injustice might result from dismissal of this case without a substantive analysis of the equal protection claim as it pertains to the Remedial Map. We therefore turn to the merits.

IV. Remedial Map

Intervenors challenge the Remedial Map on several grounds, including their characterization that the map represents an unconstitutional racial gerrymander, an abuse of the district court’s discretion, and a further dilution of Latino voting strength. These claims are ambiguously styled and could be construed as arguments under the Equal Protection Clause or Section 2. However, because Intervenor’s lack standing to bring a Section 2 challenge, we consider their arguments only under an equal protection framework.

To demonstrate that a map is an unconstitutional racial gerrymander, Intervenor’s must prove that “race was the predominant factor motivating the [map drawer’s] decision to place a significant number of voters within or without a

particular district.” *Cooper v. Harris*, 581 U.S. 285, 291 (2017) (quoting *Miller*, 515 U.S. at 916). Importantly, not all mentions of race trigger strict scrutiny, and the mere fact that the district court was “aware of racial considerations” does not indicate that the court was “motivated by them.” *North Carolina v. Covington*, 585 U.S. 969, 978 (2018) (quoting *Miller*, 515 U.S. at 916).

If race predominated in the redistricting process, then “the design of the district must withstand strict scrutiny.” *Cooper*, 581 U.S. at 292. Nothing in the record, however, supports a claim that race predominated in the redistricting process. To the contrary, the district court accomplished three distinct, non-racial objectives when it adopted a map that: (1) “starts with, and avoids gratuitous changes to, the enacted map while remedying the Voting Rights Act violation at issue”; (2) “keeps the vast majority of the lands that are of interest to the Yakama Nation together”; and (3) “is consistent with the other state law and traditional redistricting criteria.” In particular, the map minimizes population deviations, maintains district compactness, and creates districts of contiguous, traversable territory that do not unnecessarily split counties, cities, or precincts. The Remedial Map stands.

A. LD 14’s Shape

The shape of LD 14 itself does not reflect that race predominated in the district court’s construction of the Remedial Map. In Intervenor’s view, the shape of LD 14 is so exceptional that it is “unexplainable-except-by-racial-grounds,” and therefore presumptively unconstitutional. Indeed, we recognize that when a district is “so extremely irregular on its face that it rationally can be viewed only as an effort to segregate the races for purposes of voting,” strict

scrutiny applies. *Bush v. Vera*, 517 U.S. 952, 958 (1996) (quoting *Shaw I*, 509 U.S. at 642). No such irregularity triggers strict scrutiny here. Despite Intervenor’s rhetoric denigrating LD 14 as an “octopus slithering along the ocean floor” akin to the “sacred Mayan bird” and “bizarrely shaped tentacles” in *Bush v. Vera*, LD 14’s shape is neither unusual nor “extremely irregular on its face” as Intervenor suggests—and nowhere near as inexplicable as the districts in *Shaw* and *Bush v. Vera*. *Vera*, 517 U.S. at 958, 965, 974.

A visual review of LD 14 (Figure 1) reveals a district that, like many of the other districts in Washington, is essentially a large contiguous tract with only a small portion surrounding another district. In contrast, District 12 in *Shaw I* (Figure 2) was a noncompact squiggle that ran, like a river, directly through the middle of multiple other districts. Districts 18, 29 and 30 in *Bush v. Vera* (Figure 3) were similarly irregular, with complex, interlocking borders; narrow corridors; and strange protrusions. The districts’ bizarre, noncompact shapes were evidence that Texas had “substantially neglected traditional districting criteria such as compactness, that it was committed from the outset to creating majority-minority districts, and that it manipulated district lines to exploit unprecedentedly detailed racial data.” *Vera*, 517 U.S. at 962. The shapes of the three districts reflected an “utter disregard for traditional redistricting criteria” and were “ultimately unexplainable on grounds other than” race. *Id.* at 976 (addressing Districts 18 and 29); *see also id.* at 971 (discussing how District 30’s shape similarly “reveal[s] that political considerations were subordinated to racial classification in the drawing of many of the most extreme and bizarre district lines”). The Texas districts look more like inkblots of a Rorschach test than legislative districts.

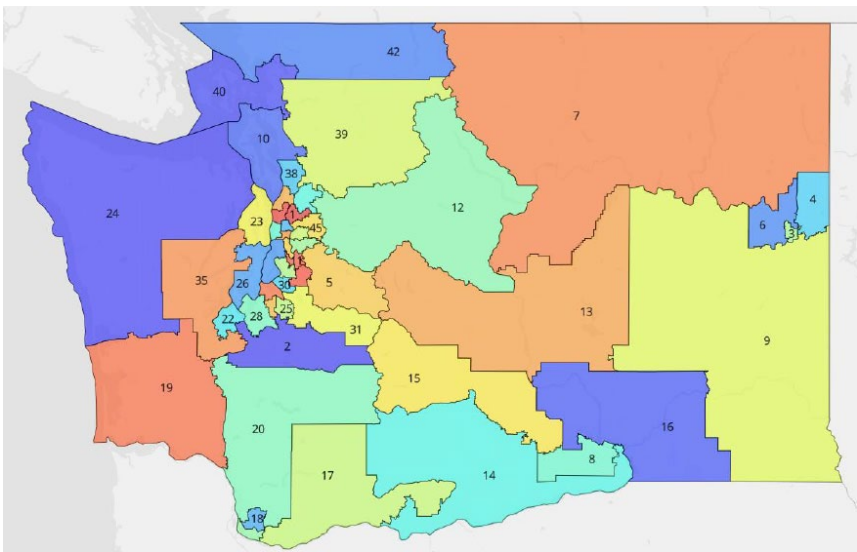


Figure 1: Remedial Map 3A.

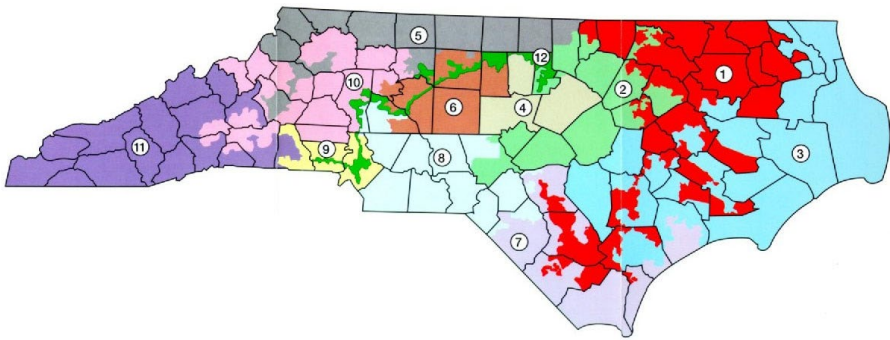


Figure 2: The electoral map in *Shaw I*. 509 U.S. at 659 (App'x)
(District 12 colored in green).



Figure 3: Districts 18, 29, and 30 in Bush v. Vera. 517 U.S. at 986 (App'x A-C).

Here, unlike in *Shaw I* or *Vera*, rational, non-racial explanations readily support the shape of LD 14. Soto Palmer notes that the challenged protrusions were added to “include the Yakama Nation’s off-reservation trust lands and fishing villages in the same district as its reservation” to address Intervenor’s objection that the proposed map did not include off-Reservation trust land. To the extent LD 14’s shape is in any way unusual, it is directly attributable to Intervenor’s own requests during the remedial process—not to any improper racial considerations. In short, LD 14’s shape alone does not subject it to strict scrutiny.

B. Alternative Maps

In equal protection challenges to redistricting plans, alternative plans can “serve as key evidence” of racial predominance. *Cooper*, 581 U.S. at 317. But the alternative maps here do not supply such proof.

Intervenor’s point to Plaintiffs’ Maps 4 and 5 and their own map, offered by Dr. Trende, as evidence that the district court could have adopted a less disruptive map. Based on our review of the record, the district court carefully considered all proposed remedial maps and ultimately selected Map 3A

because it was most “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 . . . and it avoids another cross-Cascade [mountains] district.”

The district court’s rejection of Maps 4 and 5 on the grounds of traditional redistricting principles does not suggest that the district court improperly considered race by adopting a variant of Map 3A. Significantly, the district court considered and rejected Intervenor’s proposed map for failure to remedy the Section 2 violation.

For each of Intervenor’s proffered alternatives, the district court rejected the alternative maps on race-neutral grounds. The district court’s thoughtful attention to the details of the maps, population and voter numbers, and viable alternatives does not furnish evidence of racial predominance. Instead, it confirms that race was not the predominant factor in shaping the map.

C. Intent to Remedy Section 2 Violation

Finally, the record does not otherwise support a claim that “race was the predominant factor motivating the [map drawer’s] decision to place a significant number of voters within or without a particular district.” *Cooper*, 581 U.S. at 291 (quoting *Miller*, 515 U.S. at 916). We acknowledge that “[a]pplying traditional equal protection principles in the voting-rights context is ‘a most delicate task.’” *Shaw II*, 517 U.S. 899, 905 (1996) (quoting *Miller*, 515 U.S. at 905). And we are especially cognizant of our obligation to “exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race.” *Miller*, 515 U.S. at 916. The “[Supreme] Court has long recognized,” however, “[t]he distinction between being aware of racial

considerations and being motivated by them,” *Covington*, 585 U.S. at 978 (quoting *Miller*, 515 U.S. at 916). The mere mention of race is not enough to trigger strict scrutiny. Race must be more than “a motivation” to trigger strict scrutiny; it must be “the *predominant* factor,” “subordinating traditional race-neutral districting principles to racial considerations.” *Easley v. Cromartie*, 532 U.S. 234, 241 (2001) (cleaned up). Although this map was configured by the district court and not the state legislature, we afford the same “presumption of good faith” to the district court. *Miller*, 515 U.S. at 916.

Intervenors identify two points in the district court proceedings that supposedly demonstrate race’s predominance in the decision-making: first, the district court’s recognition that a “fundamental goal of the remedial process” is to “unite the Latino community of interest in the region,” and second, the district court’s rejection of Intervenors’ proof-of-concept map because it failed to unite the Latino community in the Yakima Valley.

These references are far from sufficient to show that race predominated. The Supreme Court has distinguished between racial classification and the unification of “tangible communities of interest.” *Miller*, 515 U.S. at 919 (internal marks and citation omitted). As the Court counseled: “A State is free to recognize communities that have a particular racial makeup, provided its action is directed toward some common thread of relevant interests.” *Id.* at 920. That is precisely what the district court did here. Experts testified that communities in the larger Yakima Valley were dependent on the agriculture and dairy industries, had large Spanish-speaking and first-generation populations, shared housing access issues due to substandard and overcrowded farmworker housing, and shared common migration patterns

and historical experiences of racism in the region. Unlike in *Miller*, where “[a] comprehensive report demonstrated the fractured political, social, and economic interests” of the minority population, here, the Latino community in the Yakima Valley evinces the “common thread of relevant interests” rendering it a “tangible communit[y] of interest.” *Id.* at 919–20 (internal marks and citation omitted). An intent to unify that political community is not tantamount to a predominantly racial motivation.

Even if race—as distinct from belonging in a political community—were “a motivation” in the district court’s actions, which it was not, that motivation alone would not trigger strict scrutiny. The touchstone is whether race predominates in shaping the configuration. In *Cromartie*, the Court held that a map drawer’s direct admission that a challenged redistricting plan sought “racial balance” in a congressional delegation, even if it “shows that the legislature considered race, along with other partisan and geographic considerations . . . “sa[id] little or nothing about whether race played a *predominant* role comparatively speaking.” 532 U.S. at 253 (emphasis in original).

To bring that point home, in *Miller*, the record supported a finding of racial predominance where the state admitted that certain counties would not have been excluded or included “*but for* the need to include additional black population in that district,” and that the need to create majority-black districts required the state to “violate all reasonable standards of compactness and contiguity.” 515 U.S. at 918–19 (emphasis added) (cleaned up). Here, in contrast, the district court considered traditional, race-neutral districting principles throughout the remedial process, including minimizing total population deviation; ensuring the reasonable shape, compactness, and contiguity

of affected districts; keeping together the lands of interest to the Yakama Nation; and maintaining partisan competitiveness of the impacted districts. The district court did not subordinate these race-neutral redistricting principles to race when it drew the Remedial Map.

D. Intervenor's Other Arguments

Intervenor's remaining objections to the Remedial Map do not support a claim that race predominated. Intervenor now contend that too many Washingtonians were moved into new districts, that the Remedial Map's partisan composition now favors Democrats, and that incumbents were harmed.

We begin by noting that the factual record furnishes only limited support for Intervenor's objections, which are, in any case, not germane to the issue of racial predominance. For instance, Intervenor claim that 500,000 of Washington's approximately 7.7 million residents were moved into new districts, whereas Plaintiffs suggest that the number is nearly 100,000 fewer. Intervenor also assert that the Remedial Map was drawn to benefit Democrats, whereas both Plaintiffs and the district court note that the Remedial Map "confer[red] no gain or loss to any party beyond LDs 14 and 15, and the overall partisan tilt of the legislative map remains slightly Republican, just as in the enacted plan."

But even accepting Intervenor's view of the facts, these arguments, which center on the political lean of the new LD 14, are not obviously relevant to Intervenor's claim that the Remedial Map was an illegal racial gerrymander. They are objections based on partisanship, not race. The equal protection challenge is grounded in race, not partisanship.

Intervenors' remaining arguments—that the Remedial Map improperly lowered the HCVAP of LD 15 from 51.1% to 50.2% (based on the 2021 census), that LD 14 is an improper coalition or crossover district, and that the Remedial Map altered too many districts to remedy the Section 2 violation—also do not bear on the question of whether race predominated in the district court's redistricting process.

Conclusion

The district court properly exercised jurisdiction over the challenge to the Remedial Map. Section 2284 does not require a three-judge court for a statutory challenge to redistricting under the Voting Rights Act. Although Intervenors lack standing to appeal the liability finding and lack standing as to the Section 2 claims under the Voting Rights Act, they have standing to challenge the Remedial Map on equal protection grounds. The appeal of the liability order is dismissed for lack of jurisdiction. The appeal of the remedial order and judgment is also dismissed for lack of jurisdiction, except for Intervenors' equal protection claims, as to which we affirm the district court. Intervenors shall bear the costs of appeal.

**AFFIRMED IN PART and DISMISSED IN PART
FOR LACK OF JURISDICTION.**

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate electronic filing system or, if you are a pro se litigant or an attorney with an exemption from the electronic filing requirement, file one original motion on paper.

Petition for Panel Rehearing and Petition for Rehearing En Banc (Fed. R. App. P. 40; 9th Cir. R. 40-1 to 40-4)

(1) Purpose

A. Panel Rehearing:

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - A material point of fact or law was overlooked in the decision;
 - A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Rehearing En Banc

- A party should seek en banc rehearing only if one or more of the following grounds exist:
 - Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
 - The proceeding involves a question of exceptional importance; or

- The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing or rehearing en banc must be filed within 14 days after entry of judgment. Fed. R. App. P. 40(d).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(d). The deadlines for seeking reconsideration of a non-dispositive order are set forth in 9th Cir. R. 27-10(a)(2).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-4.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- Attorneys must file the petition electronically via the appellate electronic filing system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-8000.

Petition for a Writ of Certiorari

- The petition must be filed with the Supreme Court, not this Court. Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov.

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

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APPENDIX B

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

SUSAN SOTO PALMER, *et al.*,

Plaintiffs,

v.

STEVEN HOBBS, *et al.*,

Defendants,

And

JOSE TREVINO, *et al.*,

Intervenor-Defendants.

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

MEMORANDUM OF DECISION

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

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

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

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

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

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

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

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

13 **A. Redistricting Process**

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

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

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

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

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

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

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

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

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

RCW 44.05.090.

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

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

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

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

B. Three-Part *Gingles* Framework

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

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

1 that it is politically cohesive,” such that it could, in fact, elect a representative of its choice.
2 *Gingles*, 478 U.S. at 51. The first two preconditions “are needed to establish that the
3 minority has the potential to elect a representative of its own choice in some single-
4 member district.” *Grove v. Emison*, 507 U.S. 25, 40 (1993). Third, “the minority must be
5 able to demonstrate that the white majority votes sufficiently as a bloc to enable it ... to
6 defeat the minority’s preferred candidate.” *Gingles*, 478 U.S. at 51. “[T]he ‘minority
7 political cohesion’ and ‘majority bloc voting’ showings are needed to establish that the
8 challenged districting thwarts a distinctive minority vote by submerging it in a larger white
9 voting population.” *Grove*, 507 U.S. at 40.
10
11

12 If a plaintiff fails to establish the three preconditions “there neither has been a
13 wrong nor can be a remedy.” *Id.* at 40–41. If, however, a plaintiff demonstrates the three
14 preconditions, he or she must also show that under the “totality of circumstances” the
15 political process is not “equally open” to minority voters in that they “have less
16 opportunity than other members of the electorate to participate in the political process and
17 to elect representatives of their choice.” 52 U.S.C. § 10301. Factors to be considered when
18 evaluating the totality of circumstances include:
19
20

- 21 1. the extent of any history of official discrimination in the state or political
22 subdivision that touched the right of the members of the minority group to
23 register, to vote, or otherwise to participate in the democratic process;
- 24 2. the extent to which voting in the elections of the state or political
25 subdivision is racially polarized;
- 26 3. the extent to which the state or political subdivision has used unusually
large election districts, majority vote requirements, anti-single shot

provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;

5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;

6. whether political campaigns have been characterized by overt or subtle racial appeals;

7. the extent to which members of the minority group have been elected to public office in the jurisdiction[;]

[8.] whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group[; and]

[9.] whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

Gingles, 478 U.S. at 36–37 (the “Senate Factors”) (quoting S. Rep. 97-417, 28–29, 1982 U.S.C.C.A.N. 177, 206–07).

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

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

C. Numerosity and Geographic Compactness

It is undisputed that Latino voters in the Yakima Valley region are numerous enough that they could have a realistic chance of electing their preferred candidates if a legislative district were drawn with that goal in mind. Plaintiffs have shown that such a district could be reasonably configured. Dr. Loren Collingwood, plaintiffs’ expert on the statistical and demographic analysis of political data, presented three proposed maps that perform similarly or better than the enacted map when evaluated for compactness and

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

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

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

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

8 **D. Political Cohesiveness**

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

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

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

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

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

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

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

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

F. Totality of the Circumstances

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

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

1. History of Official Discrimination

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

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

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

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

16 And so the people that are renters, the people that are living in labor camps,
17 would not be allowed to have a say in those circumstances. So there's a bias
18 towards land ownership, historically, and how lines are drawn, who gets to
19 vote, who gets to have a say in their democracy. If you don't feel like you
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.

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

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

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

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

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

16 Three of the experts who testified at trial opined that there are voting practices,
17 separate and apart from the drawing of LD 15’s boundaries, that may hinder Latino voters’
18 ability to fully participate in the electoral process in the Yakima Valley region. First, LD
19 15 holds its senate election in a non-presidential (off) election year. Drs. Collingwood,
20 Estrada, and Barreto opined that Latino voter turnout is at its lowest in off-year elections,
21 enlarging the turnout gap between Latino and white voters in the area. Second, Dr. Barreto
22 indicated that Washington uses at-large, nested districts to elect state house
23 representatives, a system that may further dilute minority voting strength. *See Gingles*, 478
24 U.S. at 47. Third, Dr. Estrada testified that the ballots of Latino voters in Yakima and
25
26

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

6 Intervenor generally ignore this testimony and the experts' reports, baldly asserting
7 that there is "no evidence" of other voting practices or procedures that discriminate against
8 Latino voters in the Yakima Valley region. Dkt. # 215 at 27. The State, for its part,
9 challenges only the signature verification argument. It appears that Dr. Estrada's opinion
10 that Latino voters are disproportionately impacted by the process is based entirely on an
11 article published on Crosscut.com which summarized two other articles from a non-profit
12 organization called Investigate West. While it may be that experts in the fields of history
13 and Latino voter suppression would rely on facts asserted in secondary articles when
14 developing their opinions, the Court need not decide the admissibility of this opinion under
15 Fed. R. Ev. 703. Even without considering the possibility that the State's signature
16 verification process, as implemented in Yakima and Franklin Counties, suppresses the
17 Latino vote, plaintiffs have produced un rebutted evidence of other electoral practices that
18 may enhance the opportunity for discrimination against the minority group.
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21

22 **4. Access to Candidate Slating Process**

23 There is no evidence that there is a candidate slating process or that members of the
24 minority group have been denied access to that process.
25
26

5. Continuing Effects of Discrimination

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

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

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

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

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

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

9 **7. Success of Latino Candidates**

10
11 This Senate Factor evaluates the extent to which members of the minority group
12 have been elected to public office in the jurisdiction, a calculation made more difficult in
13 this case by the fact that the boundaries of the “jurisdiction” have moved over time. The
14 parties agree, however, that in the history of Washington State, only three Latinos were
15 elected to the state Legislature from legislative districts that included parts of the Yakima
16 Valley region. That is a “very, very small number” compared to the number of
17 representatives elected over time and considering the large Latino population in the area.
18
19 Trial Tr. at 145 (Dr. Estrada testifying). Even when the boundaries of the “jurisdiction” are
20 reduced to county lines, Latino candidates have not fared well in countywide elections: as
21 of the time of trial, only one Latino had ever been elected to the three-member Board of
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23
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1 Yakima County Commissioners, and no Latino had ever been elected to the Franklin
2 County Board of Commissioners.¹⁰

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

17 **8. Responsiveness of Elected Officials**

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

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

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

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

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

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

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

9. Justification for Challenged Electoral Practice

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

10. Proportionality

Section 2(b) specifies that courts can consider the extent to which members of a protected class have been elected to office in the jurisdiction (an evaluation performed under Senate Factor 7), but expressly rejects any right “to have members of a protected class elected in numbers equal to their proportion in the population.” 52 U.S.C.

§ 10301(b). The Supreme Court recently made clear that application of the *Gingles* preconditions, in particular the geographically compact and reasonably configured requirements of the first precondition, will guard against any sort of proportionality requirement. *Milligan*, 143 S.Ct. at 1518.

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

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

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

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

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

1 556 U.S. 1, 13 (2009). The cited discussion defines “majority-minority districts,”
2 “influence districts,” and “crossover districts,” however, and ultimately concludes that a
3 district in which minority voters have the potential to elect representatives of their own
4 choice – the key to the Section 2 analysis – qualifies as a majority-minority district.
5 *Bartlett*, 556 U.S. at 15. As discussed in *Perry*, then, the proper inquiry is “whether the
6 number of districts in which the minority group forms an effective majority is roughly
7 proportional to its share of the population in the relevant area.” 548 U.S. at 426. *See also*
8 *Old Person v. Cooney*, 230 F.3d 1113, 1129 (9th Cir. 2000) (describing “proportionality”
9 as “the relation of the number of majority-Indian voting districts to the American Indians’
10 share of the relevant population). The fact that Democrats are elected to statewide offices
11 by other voters in other parts of the state is not relevant to the proportionality evaluation.¹²
12
13
14

15 Regardless, the Court finds that, in the circumstances of this case, the
16 proportionality check does not overcome the other evidence of Latino vote dilution in LD
17 15. The totality of the circumstances factors “are not to be applied woodenly,” *Old Person*,
18 230 F.3d at 1129, and “the degree of probative value assigned to proportionality may vary
19 with other facts,” *De Grandy*, 512 U.S. at 1020. In this case, the distinct history of and
20 economic/social conditions facing Latino voters in the Yakima Valley region make it
21 particularly inappropriate to trade off their rights in favor of opportunity or representation
22 enjoyed by others across the state. The intensely local appraisal set forth in the preceding
23
24
25

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

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

7 * * *

8
9 The question in this case is whether the state has engaged in line-drawing which, in
10 combination with the social and historical conditions in the Yakima Valley region, impairs
11 the ability of Latino voters in that area to elect their candidate of choice on an equal basis
12 with other voters. The answer is yes. The three *Gingles* preconditions are satisfied, and
13 Senate Factors 1, 2, 3, 5, 6, 7, and 8 all support the conclusion that the bare majority of
14 Latino voters in LD 15 fails to afford them equal opportunity to elect their preferred
15 candidates. While a detailed evaluation of the situation in the Yakima Valley region
16 suggests that things are moving in the right direction thanks to aggressive advocacy, voter
17 registration, and litigation efforts that have brought at least some electoral improvements
18 in the area,¹³ it remains the case that the candidates preferred by Latino voters in LD 15
19 usually go down in defeat given the racially polarized voting patterns in the area.
20
21
22

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

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

Intervenors make two additional arguments that are not squarely addressed through application of the *Gingles* analysis. The first is that the analysis is inapplicable where the challenged district already contains a majority Latino CVAP, and the Court should “simply hold that, as a matter of sound logic, Hispanic voters have equal opportunity to participate in the democratic process and elect candidates as they choose.” Dkt. # 215 at 13. The Supreme Court has recognized, however, that “it may be possible for a citizen voting-age majority to lack real electoral opportunity,” *Perry*, 548 U.S at 428, and the evidence shows that that is the case here. A majority Latino CVAP of slightly more than 50% is insufficient to provide equal electoral opportunity where past discrimination, current social/economic conditions, and a sense of hopelessness keep Latino voters from the polls in numbers significantly greater than white voters. Plaintiffs have shown that a geographically and reasonably configured district could be drawn in which the Latino CVAP constitutes an effective majority that would actually enable Latinos to have a fair and equal opportunity to obtain representatives of their choice. That is the purpose of Section 2, and creating a bare, ineffective majority in the Yakima Valley region does not immunize the redistricting plan from its mandates.

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

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

Trial Tr. at 842.

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

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

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

1 opportunity than whites to elect their preferred representatives.” *Gingles*, 478 U.S. at 63.

2 But Justice O’Connor disagreed with Justice Brennan on this point only because she could

3 imagine a very specific situation in which the reason for the divergence between white and

4 minority voters could be relevant to evaluating a claim for voter dilution. Such would be

5 the case, she explained, if the “candidate preferred by the minority group in a particular

6 election was rejected by white voters for reasons other than those which made the

7 candidate the preferred choice of the minority group.” *Gingles*, 478 U.S. at 100. In that

8 situation, the oddity that made the candidate unpalatable to the white majority would

9 presumably not apply to another minority-preferred candidate who might then “be able to

10 attract greater white support in future elections,” reducing any inference of systemic vote

11 dilution. *Gingles*, 478 U.S. at 100. There is no evidence that Latino-preferred candidates in

12 the Yakima Valley region are rejected by white voters for any reason other than the

13 policy/platform reasons which made those candidates the preferred choice, and there is no

14 reason to suspect that future elections will see more white support for candidates who

15 support unions, farmworker rights, expanded healthcare, education, and housing options,

16 *etc.* Especially in light of the evidence showing significant past discrimination against

17 Latinos, on-going impacts of that discrimination, racial appeals in campaigns, and a lack of

18 responsiveness on the part of elected officials, plaintiffs have shown inequality in electoral

19 opportunities in the Yakima Valley region: they prefer candidates who are responsive to

20 the needs of the Latino community whereas their white neighbors do not. The fact that the

21 candidates identify with certain partisan labels does not detract from this finding.

22

23

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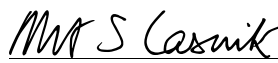
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26

1 For all of the foregoing reasons, the Court finds that the boundaries of LD 15, in
2 combination with the social, economic, and historical conditions in the Yakima Valley
3 region, results in an inequality in the electoral opportunities enjoyed by white and Latino
4 voters in the area. The Clerk of Court is directed to enter judgment in plaintiffs' favor on
5 their Section 2 claim. The State of Washington will be given an opportunity to adopt
6 revised legislative district maps for the Yakima Valley region pursuant to the process set
7 forth in the Washington State Constitution and state statutes, with the caveat that the
8 revised maps must be fully adopted and enacted by February 7, 2024.
9

10
11 The parties shall file a joint status report on January 8, 2024, notifying the Court
12 whether a reconvened Commission was able to redraw and transmit to the Legislature a
13 revised map by that date. If the Commission was unable to do so, the parties shall present
14 proposed maps (jointly or separately) with supporting memoranda and exhibits for the
15 Court's consideration on or before January 15, 2024. Regardless whether the State or the
16 Court adopts the new redistricting plan, it will be transmitted to the Secretary of State on
17 or before March 25, 2024, so that it will be in effect for the 2024 elections.
18
19

20
21 Dated this 10th day of August, 2023.

22
23 
24 Robert S. Lasnik
25 United States District Judge
26

APPENDIX C

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3
4
5 UNITED STATES DISTRICT COURT
6 FOR THE WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 SUSAN SOTO PALMER, *et al.*,

9 Plaintiffs,

10 v.

11 STEVEN HOBBS, *et al.*,

12 Defendants,

13 and

14 JOSE TREVINO, *et al.*,

15 Intervenors.
16

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

ORDER REGARDING REMEDY

17 **BACKGROUND**

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

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

7
8 In response to criticisms levied by intervenors, plaintiffs revised their five remedial
9 maps to avoid incumbent displacement and/or incumbent pairing where possible. Dkt.
10 # 254. After reviewing the ten alternative maps that had been provided, the written
11 submissions of the parties, and the competing expert reports, and after conferring with Ms.
12 Mac Donald, the Court developed a preference for what was called Remedial Map 3A.
13 Dkt. # 254-1 at 31-33.² The Court heard oral argument regarding the remedial proposals on
14 February 9, 2023, and informed the parties that it was leaning towards adopting Remedial
15 Map 3A. At Intervenors' request, the Court scheduled an evidentiary hearing and invited
16 the parties to submit supplemental expert reports focusing on any problems or concerns
17 with Remedial Map 3A. The Court also reached out to the Confederated Tribes and Bands
18 of the Yakama Nation ("Yakama Nation"), soliciting their written input and participation
19 at the March 8th evidentiary hearing. Having reviewed the submissions of the parties³ and
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21
22
23

24 ¹ The documents provided and the instructions given to Ms. Mac Donald are set forth in Dkt. # 246.

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

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

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

7 **CHOICE OF REMEDIAL MAP**

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

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

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

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

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

22 (hereinafter "the adopted map.")
23

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

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

1 The adopted map starts with, and avoids gratuitous changes to, the enacted map
2 while remedying the Voting Rights Act violation at issue. The Latino community of
3 interest that stretches from East Yakima, through the smaller Latino population centers
4 along the Yakima River, to Pasco is unified in a single legislative district. Although the
5 Latino citizen voting age population of LD 14 in the adopted map is less than that of the
6 enacted district, the new configuration provides Latino voters with an equal opportunity to
7 elect candidates of their choice to the state legislature, especially with the shift into an
8 even-numbered district, which ensures that state Senate elections will fall on a presidential
9 year when Latino voter turnout is generally higher.
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12 The adopted map also keeps the vast majority of the lands that are of interest to the
13 Yakama Nation together and has the highest proportion of Native American citizen voting
14 age population when compared to the enacted map or the map proposed by intervenors.
15

16 Finally, the adopted map is consistent with the other state law and traditional
17 redistricting criteria. It has a negligible total population deviation from the target
18 population of 157,251. LD 14 and the surrounding districts of the adopted map are
19 reasonably shaped and compact, and the districts consist of contiguous territory that is
20 traversable and minimizes county, city, and precinct splits.⁶ Plaintiffs' expert, Dr. Kassra
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24 ⁶ With the able (and much appreciated) assistance of the Secretary of State's staff and the Yakama
25 Nation, plaintiffs have made a number of small boundary adjustments to ensure that areas of land are not
26 "trapped" between county boundaries, congressional districts, legislative districts, county council or
commissioner districts, and city or town limits and that three parcels identified as MV-72, 1026, and 1025
are included in LD 14.

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

3 4 **INTERVENORS' OBJECTIONS**

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

11 **1. Yakama Nation**

12 The first issue appears to be a non-starter. As described at the evidentiary hearing,
13 the lands in which the Yakama Nation has an interest expand across much of the central
14 part of the State: all of those lands cannot possibly be included in a single legislative
15 district. The adopted map does, however, preserve the integrity of the Reservation and all
16 off-Reservation trust lands designated by the U.S. Census. It also increases the Native
17 American citizen voting age population of LD 14, thereby increasing the communities'
18 electoral opportunities. While the White Salmon River basin and a portion of Klickitat
19 County south of the Reservation are excluded, significant portions of the Yakima,
20 Klickitat, and Columbia watersheds are included in LD 14. The area that was shifted to LD
21 17 has a significant population (approximately 15,750) and its exclusion from LD 14 was
22 essential to satisfying the statutory requirement of population parity. Importantly, the
23 Native American population in that area is only 662, with a white population of over
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1 12,200. To retain this area in LD 14 of the adopted map would not only overpopulate the
2 district in violation of the equal population criterion, but would also skew the
3 demographics and perpetuate the vote dilution at issue in this lawsuit.
4

5 **2. Scope of Boundary Adjustments**

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

13 **a. Magnitude of Population Shifts**

14 Intervenor's expert, Dr. Sean Trende, presents figures and maps showing the
15 number of individuals and the size of the geographic areas moving from one district to
16 another under the adopted map. Dkt. # 273 at 12-13. The percentage of individuals shifted
17 out of and into LD 8, LD 13, LD 14, LD 15, and LD 16 are significant, with core
18 population retention percentages ranging from 47.8% to 80.4%. Dkt. # 254-1 at 45; Dkt.
19 # 273 at 13. But shifts of that magnitude are necessary to unite the Latino community of
20 interest in the region.⁷ Despite these significant movements and the ripple effect they
21 cause, the adopted plan impacts only 5.5% of the State's population overall.
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26 ⁷ As discussed below, intervenor's proposed map (Dkt. # 289) does not accomplish this fundamental goal of the remedial process. The only other map Dr. Trende regards as suitably limited in its geographic scope, Remedial Map

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

11 **b. Importance of Population Shifts**

12 Intervenor presume that the consistency of legislative boundaries over time is a
13 goal of redistricting and/or this remedial process. Dkt. # 273 at 9 n.3 and 14 n.4. It is not.
14 The constitutional and statutory requirements for legislative districts do not compel the
15 Redistricting Commission to consider, much less safeguard, existing boundaries.
16 Moreover, the boundaries at issue were put in place for the 2022 election cycle: there is no
17 evidence or reason to presume that the population within any particular legislative district
18 has developed a familiarity with or an affinity for the recently-enacted borders.
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21 Under Washington law, population parity is a primary consideration in the
22 redistricting process, with other traditional redistricting criteria (such as keeping precincts
23 and communities of interest together) accomplished only “[t]o the extent consistent with”
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26 5A, fails to respect the Yakama Nation community of interest and involves shifts in LD 13, LD 14, LD 15, and LD 16 that have core population retention percentages ranging from 51.3% to 90%.

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

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

1 **c. Viable Alternatives**

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

14 **3. Political Lean**

15 Intervenor's argue that the adopted map is somehow faulty because it impacts "the
16 political lean of Washington's legislative districts beyond those found in the Yakima River
17 valley." Dkt. # 273 at 17. State law required the Redistricting Commission to "exercise its
18 powers to provide fair and effective representation and to encourage electoral competition.
19 The [C]ommission's plan shall not be drawn purposely to favor or discriminate against any
20 political party or group." RCW 44.05.090(5). Neither Dr. Oskooii nor the undersigned has
21 any interest in the partisan performance of the adopted map: the map was not drawn or
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1 adopted to favor or discriminate against either political party, but rather to unite the Latino
2 community of interest in the Yakima Valley region. Dr. Trende does not explain what
3 aspect of state or federal law is at stake here, but his data suggests that the adopted map
4 generally increases the competitiveness of the impacted districts, in keeping with the
5 dictates of RCW 44.05.090(5). *See* Dkt. # 273 at 18. The one glaring exception is LD 14,
6 which is made substantially more Democratic than its LD 15 predecessor given the
7 requirement of creating a Latino opportunity district. Dr. Trende acknowledges that this
8 shift cannot be avoided. Overall, the adopted map retains the slight Republican bias of the
9 enacted map. The Court finds that the adopted map does not meaningfully shift the
10 partisan balance of the State and that it was not drawn (or adopted) purposely to favor one
11 political party over the other.
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15 CONCLUSION

16 The task of fashioning a remedy for a Voting Rights Act violation is not one that
17 falls within the Court's normal duties. It is only because the State declined to reconvene
18 the Redistricting Commission – with its expertise, staff, and ability to solicit public
19 comments – that the Court was compelled to step in. Nevertheless, with the comprehensive
20 and extensive presentations from the parties, the participation of the Yakama Nation, and
21 the able assistance of Ms. Mac Donald, the Court is confident that the adopted map best
22 achieves the many goals of the remedial process.
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1 The Secretary of State is hereby ORDERED to conduct future elections according
2 to Remedial Map 3B (Dkt. # 288), with the following adjustments:

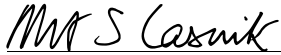
3 (1) Reassign that portion of Census Block 530770018013012 annexed by the
4 City of Grandview (Ordinance 2022-12, effective Aug. 29, 2022) from
5 Legislative District ("LD") 15 to LD14;

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

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

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

15 Dated this 15th day of March, 2024.

16 

17 Robert S. Lasnik

18 United States District Judge
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