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

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BENANCIO GARCIA III, *Plaintiff*, v. STEVEN HOBBS, in his official capacity as Secretary of State of Washington, et al., *Defendants*.	Case No.: 3:22-cv-5152-RSL-DGE-LJCV PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT NOTE ON MOTION CALENDAR: March 31, 2023 ORAL ARGUMENT REQUESTED

Plaintiff Benancio Garcia III respectfully moves the Court for summary judgment in the above-captioned matter pursuant to Fed. R. Civ. P. 56. In accordance with Local Rules W.D. Wash. LCR 56.1, a statement of material facts and memorandum in support of this motion are set forth below.

INTRODUCTION

The Washington State Redistricting Commission should well know that which, by now, should be axiomatic in American governance: "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race." *Cf. Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007) (plurality op.). Distressingly, far from learning the lessons of the past, the Commission decided that the Hispanic citizens of the Yakima Valley were a bargaining chip in a game of brinksmanship. Fortunately for the people of Washington, the U.S. Constitution stands as a bulwark against the categorization of people due to their race or ethnicity.

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Here, it is quite plain that the Washington State Redistricting Commission (the "Commission") sought to create Legislative District 15 with a racial target of *just* over 50% Hispanic Citizen Voting Age Population. It did this with no compelling justification because the Commissioners believed that either the Voting Rights Act didn't apply, or that the created district was either insufficient to elect a Hispanic candidate of choice or would eventually elect a candidate of choice over time, or some combination thereof. Because race certainly predominated in the creation of Legislative District 15 and the Commission had no sufficient justification for doing so, summary judgment should issue for Plaintiff Garcia.

STATEMENT OF MATERIAL FACTS

A. Redistricting in Washington.

The Washington State Constitution directs that "[i]n January of each year ending in one, a commission shall be established to provide for the redistricting of state legislative and congressional districts." WASH. CONST. art. II, § 43(1); *see also* RCW 44.05.030. The Commission is composed of five members. WASH. CONST. art. II, § 43(2); *see also* RCW 44.05.030. Each of the "leader[s] of the two largest political parties in each house of the legislature . . . appoint one voting member." *Id.* These four voting members select a fifth, nonvoting member to serve as the Commission's chairperson. *Id.*

The Washington Constitution requires that "[e]ach district . . . contain a population . . . as nearly equal as practicable to the population of any other district" and that "[t]o the extent reasonable, each district . . . contain contiguous territory, . . . be compact and convenient, and . . . be separated from adjoining districts by natural geographic barriers, artificial barriers, or political subdivision boundaries." WASH. CONST. art. II, § 43(5). Additionally, the Commission's redistricting plan "shall not be drawn purposely to favor or discriminate against any political party or group." *Id.* The plan must also, "insofar as practical," follow certain other traditional districting principles, including that "[d]istrict lines should be drawn so as to coincide with the boundaries of local political subdivisions and areas recognized as communities of interest[]" and that "[t]he

number of counties and municipalities divided among more than one district should be as small as possible." RCW 44.05.090.

For a redistricting plan to be adopted, it must be approved by "[a]t least three of the voting members" of the Commission. WASH. CONST. art. II, § 43(6). The Commission is required to "complete redistricting . . . no later than November 15th of each year ending in one." *Id.*; *see also* RCW 44.05.100. "Upon approval of a redistricting plan," the Commission "shall submit the plan to the legislature[,]" which may amend the Commission's plan within the first thirty days of the next regular or special legislative session by "an affirmative vote in each house of two-thirds of the members elected or appointed thereto." RCW 44.05.100. The Legislature's amendment authority is limited, as it "may not include more than two percent of the population of any legislative or congressional district." *Id.* After such 30-day period, "[t]he plan approved by the commission, with any amendment approved by the legislature, shall be final . . . and shall constitute the districting law applicable to this state for legislative and congressional elections, beginning with the next elections held in the year ending in two." *Id.*

Following the passage of a map, the Commission is required to cease operations by July 1st. RCW 44.05.110. If needed, the legislature may "adopt legislation reconvening the commission for purposes of modifying the redistricting plan." RCW 44.05.120(1).

B. History of Redistricting in the Yakima Valley.

Over the past 90 years, what is now Legislative District 15[1] has changed during each round of redistricting, but never as drastically as between 2012 and 2022. Historically, the District has covered a substantial portion of Yakima County. (From 1982 through 2001, it also included portions of neighboring counties, but never as far northeast as Othello or as far east as Pasco). *See* Dkt. # 21 ¶ 28; Dkt. # 24 ¶ 28; *see generally* STATE OF WASH., MEMBERS OF THE LEGISLATURE 1889-2019, 173-91 (2019). Over the years, the legislative district boundaries that included the

[1] At different times in the process of both drafting maps and in negotiating the final enacted maps, the Commissioners referred to the now majority HCVAP 15th District as either the 15th or 14th District. In the end, the final map primarily included the Yakima Valley in the current 15th District. As such, as the Court considers evidence in this matter, it should take notice that some exhibits may refer to the Yakima Valley legislative district as either the 14th or the 15th.

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Yakima Valley changed and various cities and counties were included in the district—often only including a portion of Yakima County in the district. *See* Dkt. # 21 ¶¶ 28-36; Dkt. # 24 ¶¶ 28-36; *see generally* Ex. 33, (173-91).

C. The 2021 Redistricting Process.

On December 10, 2020, the Speaker of the Washington House of Representatives announced the appointment of April Sims as a Commissioner representing the House Democratic Caucus and the Senate Majority Leader announced the appointment of Brady Piñero Walkinshaw as a Commissioner representing the Senate Democratic Caucus. Dkt. # 21 ¶ 37; Dkt. # 24 ¶ 37. On January 15, 2021, the Senate Minority Leader announced the appointment of Joe Fain as a Commissioner representing the Senate Republican Caucus and the House Minority Leader announced the appointment of Paul Graves as a Commissioner Representing the House Republican Caucus. Dkt. # 21 ¶ 38; Dkt. # 24 ¶ 38. On January 30, 2021, the four voting Commissioners appointed Sarah Augustine as the nonvoting, fifth member and Chair of the Commission. Dkt. # 21 ¶ 39; Dkt. # 24 ¶ 39.

Commissioners Sims and Graves were primarily responsible for negotiating and drafting the legislative maps. Fain Dep., (66:8-12, 187:23-25) (Ex. 6); Walkinshaw Dep., (52:17-53:4) (Ex. 3); Graves Dep., (290:12-23) (Ex. 1).

Between February and November 2021, the Commission held Special Business Meetings, Regular Business Meetings, and Public Outreach Meetings. Dkt. # 21 ¶ 40; Dkt. # 24 ¶ 40.

On September 21, 2021, each of the four voting Commissioners released a proposed legislative district map to the public. Dkt. # 21 ¶ 41; Dkt. # 24 ¶ 41. No Commissioner proposed a version of Legislative District 15 that resembled the district as drawn by the Commission's final redistricting plan. *See* Washington State Redistricting Commission, Proposed Legislative Maps: Fain (Ex. 25), Graves, (Ex. 26), Sims Original (Ex. 27), Walkinshaw Original (Ex. 29). No proposal, for example, contained the cities of Pasco or Othello, and none contained a majority Hispanic Citizen Voting Age Population ("HCVAP"). Dkt. # 21 ¶ 42; Dkt. # 24 ¶ 42.

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The map of Legislative District 15 initially proposed by Commissioner Sims combined the Yakama Indian Reservation with parts of Yakima and communities along Interstate 82 to Grandview. Commissioner Sims stated that her map "recognizes the responsibility to create districts that provide fair representation for communities of interest" and that "[m]aintaining and creating communities of interest" and "[c]entering and engaging communities that have been historically underrepresented" were "values guid[ing]" her efforts. *See* Exs. 25-30; Dkt. # 21 ¶ 43; Dkt. # 24 ¶ 43.

The map of Legislative District 15 initially proposed by Commissioner Walkinshaw merged cities around Yakima into a district that stretched north beyond Ellensburg and south to the Columbia River. Commissioner Walkinshaw stated his goals were to "[m]aintain and unite communities of interest and reduce city splits" and "prioritize[e] the needs of . . . historically underrepresented communities." His plan also "[c]reate[d] a majority-Hispanic/Latino district" in the neighboring Legislative District 14, which was "55.5% [Hispanic/Latino] by Voting Age Population (VAP)" and "65.5% people-of-color by VAP." Dkt. # 21 ¶ 44; Dkt. # 24 ¶ 44; *see also* (Ex. 29).

The map of Legislative District 15 as proposed by Commissioner Fain included the City of Yakima and consisted of the eastern third of Yakima County. Commissioner Fain "place[d] existing school district boundaries at the cornerstone of his legislative framework." His plan also "create[d] seven majority-minority districts statewide, and one additional majority-minority citizen voting age population (CVAP) district." Dkt. # 21 ¶ 44; Dkt. # 24 ¶ 44; *see also* (Ex. 25).

The map of Legislative District 15 as proposed by Commissioner Graves combined the northeastern portion of Yakima County, including the cities along Interstate 82, with most of Benton County apart from Richland and Kennewick. Commissioner Graves's plan "focuse[d] on communities of interest and is not drawn to favor either party or incumbents" and featured eight "majority-minority" districts. Dkt. # 21 ¶ 44; Dkt. # 24 ¶ 44; *see also* (Ex. 26).

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On October 19, 2021, the Washington State Senate Democratic Caucus circulated a presentation by Dr. Matt Barreto, a professor of political science and Chicana/o studies at UCLA and co-founder of the UCLA Voting Rights Project. *See* Ex. 18; Dkt. # 21 ¶ 47; Dkt. # 24 ¶ 47.

Dr. Barreto was hired by the Washington Senate Democratic Caucus, not by the Commission, the State of Washington, or the Legislature. Graves Dep., (275:7–276:4) (Ex. 1); Sims Dep., (242:11-15) (Ex. 2). The presentation argued that, to comply with Section 2 of the Voting Right Act, a majority HCVAP district in the Yakima Valley was required. *See* Ex. 18. The presentation included an analysis of voting patterns for just two statewide general elections, the 2012 U.S. Senate race between Maria Cantwell and Michael Baumgartner and the 2020 Governor race between Jay Inslee and Loren Culp. *See id.* Neither analysis included a Hispanic candidate. *See id.* The presentation did not include analysis of voting patterns in primary elections, or any other analysis exploring whether voting patterns could be explained by partisanship, rather than race. *See id.* Additionally, the presentation also did not consider or suggest any race-neutral alternatives despite showing that the districts initially proposed by Commissioners Sims and Walkinshaw would have voted for the Latino bloc's preferred candidate over the majority bloc's preferred candidate in the 2020 President/Vice President race. *See id.* Only two claimed "VRA Compliant" legislative district options were presented. One district contained a HCVAP of approximately 60% and the other contained a HCVAP of approximately 52%, without any explanation for why the different thresholds were chosen. *See id.*

Subsequently, Commissioners Fain and Graves and the Washington State Republican Party commissioned a VRA analysis by a Washington law firm, Davis Wright Tremaine, that determined a VRA district was not required in the Yakima Valley. Ex. 1 (87:8-88:10); DWT Memo. (Ex. 17).

Following the release of the Barreto presentation, Commissioner Walkinshaw issued a statement on October 21, 2021, two days after the presentation's release, stating that he and Commissioner Sims "will be releasing new statewide legislative maps early next week." *See* Dkt. # 21 ¶ 53; Dkt. # 24 ¶ 53. Commissioner Walkinshaw also stated that "as the first ever Latino commissioner, it has been extremely important for me to lift up and elevate Hispanic voters, and

undo patterns of racially polarized voting, particularly in the Yakima Valley." Dkt. # 21 ¶ 54; Dkt. # 24 ¶ 54.

On October 25, 2021, Commissioners Sims and Walkinshaw released revised legislative plans, both of which incorporated the "Yakama Reservation" district option from Dr. Barreto's presentation. *See* Dkt. # 21 ¶ 55; Dkt. # 24 ¶ 55.

On October 26, 2021, less than three weeks before the Commission's statutory deadline, Washington State Senate Democrats issued a press release holding out Dr. Barreto's presentation as "definitive," stipulating that "the final adopted map must include a majority-Hispanic district in the Yakima Valley." *See* Dkt. # 21 ¶ 56; Dkt. # 24 ¶ 56.

Shortly before midnight on November 15, 2021, the Commission "voted *unanimously* to approve a legislative redistricting plan." Ex. 12 (emphasis added); Dkt. # 21 ¶¶ 57-59; Dkt. # 24 ¶¶ 57-59. And, shortly after midnight on November 16, 2021, the Commission submitted "a formal resolution adopting the redistricting plan" and "a letter transmitting the plan" to the Legislature. *Id.* This process was deemed to be compliant with Washington law by the Washington Supreme Court. *Order re: Wash. State Redistricting Comm'n's Letter*, 504 P.3d 795 (Wash. 2021) (Ex. 12).

Subsequently, the Legislature approved minor adjustments to the Commission's final plan. *See* Dkt. # 21 ¶¶ 57-59; Dkt. # 24 ¶¶ 57-59. The redistricting plan approved by the Commission, together with the Legislature's amendments, constitutes Washington state's districting law for legislative elections, beginning with the upcoming 2022 elections. *See* WASH. CONST. art. II, § 43(7); RCW 44.05.100(3); *see also* Ex. 12 at 4.

The map of the new Legislative District 15 ("LD-15") as defined by the Commission's approved plan is available online at: https://www.redistricting.wa.gov/district-maps-handouts and attached hereto as Ex. 24. Elections have already taken place under the new legislative maps, whereupon, in LD-15, Nikki Torres, a Hispanic, female Republican prevailed over her Democratic opponent in the State Senate race by approximately 68% to 32%. 2022 Washington Senate Election Results (Ex. 23).

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LEGAL STANDARD

By virtue of the Equal Protection Clause, the State may not, "without sufficient justification, … 'separat[e] its citizens into different voting districts on the basis of race.'" *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 187 (2017) (quoting *Miller v. Johnson*, 515 U.S. 900, 911 (1995)). Doing so not only degrades individuals by subjecting them "to a racial classification," but also forces them into "represent[ation] by a legislator who believes his primary obligation is to represent only the members of a particular racial group." *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 263 (2015). The Supreme Court has "consistently described a claim of racial gerrymandering as a claim that race was improperly used in the drawing of boundaries of one or more *specific electoral districts*." *Bethune-Hill*, 580 U.S. at 191 (emphasis in original) (quoting *Ala. Legis. Black Caucus*, 575 U.S. at 262–63).

If "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district[,]" *id.* at 187 (quoting *Miller*, 515 U.S. at 916), the district must be stricken unless that placement was necessitated by a compelling state interest. The Supreme Court has "long assumed that complying with the VRA is a compelling interest." *Cooper v. Harris*, 581 U.S. 285, 300 (2017).

Where, as here, a "movant shows that there is no genuine dispute as to any material fact," then "the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c)(1). "[T]he existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). "Only disputes over facts that might affect the outcome of the suit under governing law will properly preclude summary judgment." *Id.* at 248. An issue of material fact is "genuine" "if the evidence is such that a reasonable [fact finder] could return a verdict for the nonmoving party." *Id.* Here, the record is clear: Race predominated in the Commission's deliberations concerning LD-15, and Plaintiff is therefore entitled to judgment as a matter of law.

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ARGUMENT

The Supreme Court has long held that "all laws" classifying "citizens on the basis of race, including racially gerrymandered districting schemes, are constitutionally suspect and must be strictly scrutinized." *Cromartie*, 526 U.S. at 546 (citing *Shaw v. Hunt*, 517 U.S. 899, 904 (1996)); *Miller*, 515 U.S. at 904–05. To carry a claim of racial gerrymandering (sometimes called a "*Shaw* claim"), the Supreme Court's precedents "call for a two-step analysis." *Cooper*, 581 U.S. at 285; *see also Shaw v. Reno*, 509 U.S. 630 (1993). In the first step a plaintiff must show "that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a district." *Cooper*, 581 U.S. at 291 (quoting *Miller*, 515 U.S. at 916). If racial considerations did predominate, then the burden shifts to the State to "prove that its race-based sorting of voters serves a 'compelling interest' and is 'narrowly tailored' to that end." *Id*. (quoting *Bethune-Hill*, 580 U.S. at 193). Here, the State fails at both steps.

A. The State Intentionally Assigned Citizens to Legislative District 15 Based on Race.

To show predominance, a plaintiff may either use "circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose." *Bethune-Hill*, 580 U.S. at 188–89 (quoting *Miller*, 515 U.S. at 913). When there is direct evidence that "race for its own sake is the overriding reason for choosing one map over others," there is no need to also present circumstantial evidence based on the contours of the map itself. *Lee v. City of Los Angeles*, 908 F.3d 1175, 1183 (9th Cir. 2018) (quoting *Bethune-Hill*, 580 U.S. at 190). After all, federal courts have recognized that a map may "look consistent with traditional, race-neutral principles" but still violate the Fourteenth Amendment due to an impermissible legislative purpose. *Id.* (quoting *Bethune-Hill*, 580 U.S. at 190). Furthermore, "[w]hat matters is 'the actual considerations that provided the essential basis for the lines drawn, not *post hoc* justifications the [legislative body] in theory could have used but in reality did not.'" *Id.* at 1183–84 (9th Cir. 2018) (quoting *Bethune-Hill*, 580 U.S. at 189–90).

The evidence that impermissible racial considerations predominated in the construction of the enacted LD-15 is overwhelming. The two Democratic appointees, Commissioners Sims and

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Walkinshaw, were clear in their contemporaneous comments and subsequent deposition testimony that they considered the construction of a majority-minority legislative district in the Yakima Valley one of their primary goals in the 2021 redistricting process because, in the words of one staffer, "our role was working to create maps that elected more Democrats." Ex. 5, (49:19-20). The two Republican Commissioners were equally clear: Because they knew this was one of their colleagues' primary goals, they were willing to acquiesce in enacting an LD-15 that suited Democratic preferences in exchange for enhancing the partisan competitiveness of districts in other parts of the State. *See* 11/11/21, Email from Grose to Sims, (Ex. 16). Compliance with the Voting Rights Act was never the primary consideration of the Commission; in fact, the Commissioners "[n]ever agreed to a definition of a VRA-compliant district" and clearly differed both in their understanding of the requirements of the VRA and the importance they ascribed to VRA compliance. Ex. 2, (159:12-13.)

Commissioner Walkinshaw plainly announced in a press release on October 21, 2021, that "[g]uaranteeing voting rights for Latino community" in the Yakima Valley—a goal that he separately explained meant "whether Latinos as voters . . . in the Yakima Valley had been able to elect Latinos to office"—was, in his opinion, "mission critical." Walkinshaw Dep., (64:4-14; 137:12-138:04) (Ex. 3). Walkinshaw also expressed to his colleagues his belief that "it was necessary . . . to have a majority Latino CVAP district in the Yakima Valley," and that this district "also must perform as a Democratic district." Fain Dep., (194:2-8) (Ex. 6); *see also* Ex. 1, (250:17-251:04) (confirming that Walkinshaw "thought that Section 2 required a majority Hispanic district by eligible voters" and that "it had to be a district that performed well for Democrats"); *see also* 10/27/21 Email From O'Neil to Walkinshaw (Ex. 14). Confronted by his own staffers with their opinion that the final proposed map did not satisfy the VRA and it was therefore preferable to deadlock and let the courts determine the map, Walkinshaw's response was: "Gee, I don't know. That sounds tough." Hall Dep., (51:21-52:07) (Ex. 4); *see also* Walkinshaw Staff Text, (Ex. 15). And even though Walkinshaw apparently did not personally believe the final map was compliant

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with the VRA, according to Democratic staffers he still felt that voting for it was "politically expedient." Ex. 5 (157:13-19); Ex. 4 (165:19-25).

Commissioner Sims's goal was similar to Walkinshaw's. Based upon deposition testimony, her primary concern appears to have been the creation of "a majority Latino or Hispanic district . . . by VAP." Ex. 2, (114:03-10). Commissioner Graves reported that a majority-Hispanic-CVAP in LD-15 "was certainly something that Commissioner Sims cared deeply about," to the extent that she "may have chosen not to vote for the map as a whole" if it did not include this feature. Ex. 1, (115:20-116:09). Commissioner Sims herself recalled instructing a staffer "to achieve a majority Hispanic district in the 15th." Ex. 2, (76:10-13); *see also id.* (207:03-04) ("I just wanted a majority Hispanic CVAP district."), O'Neil Dep., (110:10-14) (Ex. 8) ("[H]aving a Hispanic CVAP district higher than 50 percent was something [Commissioner Sims] w[as] trying to do"). But she also characterized her own goals in partisan terms: "to draw maps that reflected the political reality of our state," which in her view meant creating a map that would elect "Democratic majorities." Ex. 2, (61:02-16); *see also id.* (283:05-09). Throughout the map-drawing process, she sought "to draw a district that would increase the Democratic performance to at least 50 percent and maintain a . . . majority Hispanic CVAP district," because in her mind "50 percent plus one is all you need" for a minority group to elect their candidate of choice. *Id.* (152:08-12); (194:07-15); *see also id.* (122:25-123:03) (explaining her opinion that the only district that would enable Yakima Valley Latinos "to elect their candidate of choice" was "a majority Latino CVAP district"). Further, in her opinion, the enacted map satisfied Sims's goals for LD-15, representing "what I was able to negotiate with those priorities in mind or with those goals in mind." *Id.* (99:10-14; 100:02-04; 174:10-175:9) (compromised to pass Republican performing district that she believed would eventually perform for Democratic candidates as the population increased).

Commissioner Fain, by contrast, confirmed that his overriding objective throughout the redistricting process "was to promote competitiveness" on a statewide basis, and that he tried "to put forward offers that achieved goals" advanced by his Democratic colleagues "in exchange for promoting competitiveness." Ex. 6, (120:16). Fain further explained that, based upon

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conversations with his Democratic colleagues, he "believe[d] that the[ir] primary motivation . . . was to create more Democratic districts," which they understood to require creating a majority-HCVAP district in the Yakima Valley. *Id.* (140:18-141:13). In accordance with this objective, he proposed a map that featured "a Yakima Valley District that met the [Democrat Commissioners'] goals as they stated them." *Id*. (155:7-9). He thought that an increased number of majority-minority districts "would be particularly important to the Democratic commissioners," and so he made sure that his proposal also advanced this objective. *Id.* (198:22-199:3). Fain was "happy to cede to the Democratic commissioners the geographical boundaries that they cared about"—i.e., boundaries that would ensure a majority-HCVAP in LD-15 and improve Democratic performance from the previous map—"so long as it was in exchange for statewide competitiveness." *Id.* (158:9-12; 162:6-12). During the negotiation process, Commissioner Fain's staffer prepared a map proposal with a "target [Hispanic] citizen voting age population for Legislative District 15" of "[o]ver 50 percent" in order "to justify a Hispanic district to the Democratic Commissioners." Campos Dep., (188:06-19) (Ex. 34).

Likewise, Commissioner Graves confirmed that the Commission reviewed precinct-level racial data because "we were looking to draw[] the 15th itself to be a majority eligible voter Hispanic district." Ex. 1, (172:04-12). In fact, according to Graves, the racial contours of LD15 were a topic of discussion among the Commissioners from "pretty quickly after receiving [Census] data" in August 2021 through the time in November 2021 when they "were really drilling down to the final version of the 15th" in order "to get us to the point where you would have a district where a majority of eligible voters were Hispanic." *Id.* (174:03-13; 265:15-23). The fact that the final version of LD-15 was majority-HCVAP was, according to Graves, "part of the agreement that Commissioner Sims and I reached." *Id.* (279:21-280:01); *see also id.* (115:20-116:9; 144:06-19; 122:18-21; 290:08-19).

In other words, with respect to LD-15, the Commissioners started and ended with race; race predominated in their deliberations throughout.

In contrast to the substantial evidence of racial predominance, there is little evidence in the record that the Commissioners were concerned with VRA compliance—or even that they understood what VRA compliance would entail. Commissioner Fain testified that he did not personally believe the VRA required the creation of a majority-HCVAP district in the Yakima Valley, *id.* (193:14-19), but that he "did not think [he] was violating the 14th Amendment by considering race" in the creation of LD-15. *Id.* (207:6-12). Commissioner Graves testified that he was also not "fully convinced that it was required," but that "it's hard to try to glean general principles from the way courts have treated" the application of the VRA and the 14th Amendment in redistricting and so he was unable to draw "a firm conclusion on exactly what was allowed or required." Ex. 1, (110:01-14; 122:01-11). Commenting on the VRA presentation that the Commissioners received, Commissioner Sims recalled that "it seemed really complicated" and that even months after enactment she "still d[id]n't understand VRA in terms of all the depends [sic] and the nuance of it." Ex. 2, (56:24-57:08; 113:20-21). A staffer for Commissioner Sims testified that she "thought it was more important . . . to focus on other areas of the map than comply with the Voting Rights Act in the Yakima Valley region while . . . drawing the map." Bridges Dep., (33:12-22) (Ex. 5). When asked directly at which point the Commission determined that the VRA necessitated the creation of a majority-HCVAP district in the Yakima Valley, a staffer for Commissioner Graves responded, "I believe that decision was made regardless of the Voting Rights Act." Grose Dep., (278:15-16) (Ex. 7). Indeed, Commissioner Fain confirmed that his focus in the final days before the deadline was on "figur[ing] out how to get towards a successful vote," and he "didn't feel that arguing over the legality of this issue [of racially polarized voting] would be something that would move us forward to a successful vote." Ex. 6, (138:12-139:2). Commissioner Sims' position was apparently that VRA compliance was someone else's problem; "she did not view it being worth expending political capital to create a VRA-compliant district in the Yakima Valley because such a district would be created via litigation after the fact." Ex. 5, (92:18-24).

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Furthermore, the Commissioners testified that the Commission reviewed racial data, and specifically demographic data with respect to the Hispanic CVAP of LD-15. *See* Ex. 2, (47:23-48:12); Ex. 6, (50:17-19); Ex. 1, (122:18-21; 170:16-24); *see also* Walkinshaw and Sims Texts (Ex. 11). As one Democrat staffer who participated in Commission deliberations observed, "[i]t was clear to me in the final days that at least two commissioners were dead set on drawing a district that was 50.1 Latino in the Yakima Valley, and that they were not going to be moved off that position." Ex. 4, (75:01-04). Hence, the Commissioners carefully studied racial data throughout the redistricting process, and either personally believed in the desirability of creating a majority-HCVAP district in the Yakima Valley or were willing to create that outcome to achieve other ends.

B. The State Had No Compelling Interest That Could Justify Its Racial Gerrymander of Legislative District 15.

Because "racial considerations predominated over others" when the Commission drew LD-15, *see supra* at 9–14, its handiwork violates the Equal Protection Clause unless it can "withstand strict scrutiny." *Cooper*, 581 U.S. at 292. Accordingly, at this stage, "[t]he burden . . . shifts to the State to prove that its race-based sorting of voters serves a 'compelling interest' and is 'narrowly tailored' to that end." *Id.* (quoting *Bethune-Hill*, 580 U.S. at 193). The Supreme Court has "long assumed that complying with the VRA is a compelling interest." *Id.* at 292, 301; *see also Shaw v. Reno*, 517 U.S. at 915. Consequently, to have any hope at surviving strict scrutiny here, the State must demonstrate that the VRA justifies the Commission's race-based districting. *Cooper*, 581 U.S. at 292. The undisputed facts show that the State has not—and cannot—meet this burden.

"When a State invokes the VRA to justify race-based districting, it must show (to meet the 'narrow tailoring' requirement) that it had 'a strong basis in evidence' for concluding that the statute required its action." *Id.* at 292 (quoting *Ala. Legis. Black Caucus*, 575 U.S. at 278). Put differently, "the State must establish that it had 'good reasons' to think that it would transgress the Act if it did not draw race-based district lines." *Id.* (quoting *Ala. Legis. Black Caucus*, 575 U.S. at 278). Thus, although there is a concurrent VRA challenge to LD-15, *see Soto Palmer et al. v.*

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Hobbs et al., No. 3:22-cv-5035 (W.D. Wash.), resolution of *Palmer* is not a prerequisite to resolution here because the "standard does not require the State to show" that the Commission's "action was 'actually . . . necessary' to avoid a statutory violation," but only that the Commission had "good reasons to believe," at the time it drew the maps, that "it must use race in order to satisfy the [VRA], 'even if a court does not find that the actions were necessary for statutory compliance." *See Bethune-Hill*, 580 U.S. at 194 (quoting *Ala. Legis. Black Caucus*, 575 U.S. at 278).

Consequently, to satisfy the inquiry here—regardless of the outcome in *Palmer*—the State must prove the Commission, as a whole, had a strong basis in evidence "to think that all the '*Gingles* preconditions' [were] met" and, as a result, "that §2 require[d] drawing a majority-minority district." *Id.* at 301–02 (quoting *Bush v. Vera*, 517 U.S. 952, 978 (1996) (plurality opinion)). But if it cannot, then it cannot use a purported belief in VRA compliance as a justification for its race-based districting *Id.* at 302.

In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the Supreme Court identified "three threshold conditions for proving vote dilution under §2 of the VRA." *Cooper*, 581 U.S. at 301 (citing *Gingles*, 478 U.S. at 50–51). "First, a minority group must be sufficiently large and geographically compact to constitute a majority in some reasonably configured legislative district." *Id.* at 301–02 (quoting *Gingles*, 478 U.S. at 50) (internal citation marks omitted). "Second, the minority group must be 'politically cohesive.'" *Id.* at 302 (quoting *Gingles*, 478 U.S., at 51). "And third, a district's white majority must vote sufficiently as a bloc to usually defeat the minority's preferred candidate." *Id.* (quoting *Gingles*, 478 U.S. at 51) (cleaned up). "When a State invokes the VRA to justify race-based districting, it must show (to meet the 'narrow tailoring' requirement) that it had 'a strong basis in evidence' for concluding that the statute required its action." *Id.* at 292 (quoting *Ala. Legis. Black Caucus*, 575 U.S. at 278). Put differently, "the State must establish that it had 'good reasons' to think that it would transgress the Act if it did not draw race-based district lines." *Id.* (quoting *Ala. Legis. Black Caucus*, 575 U.S. at 278).

As detailed below, the State cannot establish even one of the *Gingles* preconditions were necessary to establish a successful Section 2 defense, let alone all three. *See infra* at 22–29. But

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before elaborating on the State's failure to meet each precondition, Plaintiff highlights the glaring lack of evidence—other than a partisan presentation—to support any belief (let alone a reasonable one) that the VRA required a majority-minority district in the Yakima Valley.

1. The State Cannot Invoke a VRA Defense, Because It Knew It Was Not Creating a VRA Compliant Map When It Passed the Enacted LD15.

Initially, the State cannot invoke a compelling interest in compliance with the Voting Rights Act, because a majority of the Commissioners knew they were not actually doing so and exactly half of the Commissioners did not believe they actually needed to do so.

First, based upon deposition testimony, at least three of the four voting Commissioners—a majority—did not believe that the district they created and voted to enact was compliant with the VRA. Ex. 1, (122:01-11) ("I wasn't fully convinced that [a majority-Hispanic-CVAP district] was required."); Ex. 6, (193:14-19); Ex. 4, (51:18-20) (Commissioner Walkinshaw's staff confronted him with their opinion that LD15 as enacted would violate the VRA, but he communicated that "he was not willing to fight very hard for an opportunity district."); O'Neil Texts with Commissioner Walkinshaw, (Exs. 37, 38). And the fourth Commissioner, Sims, decided that a bare majority district was sufficient to satisfy the VRA despite the contrary advice given by Dr. Barreto. Ex. 2, (174:10-175:09) (explaining her decision to reduce Hispanic CVAP in the district below 50 percent under the assumption that it would increase over time); *see also* 11/11/21, Walkinshaw and Sims Texts, (Ex. 20). As one staff member put it, "I had the sense that VRA compliance was actually negotiable," for the Democratic Commissioners. Ex. 8, (166:24-167:1-4), and that "the VRA district . . . was used as a negotiating tool, as kind of a bargaining chip, rather than a ... good-faith discussion/understanding of what does the law require here." *Id.* (235:24-236:13).

Second, none of the Commissioners performed an independent analysis of the *Gingles* preconditions with respect to the final map. *See* Ex. 1, (108:03-06); Ex. 6, (138:12-139:02) (testifying that he did not see a racially polarized voting analysis as "something that would move us forward to a successful vote"). Commissioner Walkinshaw testified that he did not recall any

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Commissioner conducting an analysis of racially polarized voting in the Yakima Valley beyond the study commissioned by the Senate Democratic Caucus—a study whose conclusions were not accepted by all Commissioners. Ex. 3, (82:18-24). Nor was a staffer for Commissioner Sims aware of any racially polarized voting analysis performed with respect to the final map. Davis Dep., (208:11-19) (Ex. 35). Indeed, the Commissions' nonpartisan executive director testified that, to her knowledge, the Commission did not "have anyone do a Voting Rights Act compliance [sic] on the final legislative district map[.]" McLean Dep., (132:12-15) (Ex. 36).

Third, only two of the four Commissioners thought that a VRA compliant district was even necessary. The *Commission* did not retain an expert on whether the VRA required the creation of a majority-minority district. *See* Ex. 25, (97:7-9). Indeed, when Chair Augustine suggested hiring a VRA consultant, the Commission rejected the proposition. Ex. 6, (53:12–57:1); Ex. 1, (274:22–275:21); Augustine Dep., (74:7-9, 75:1-3) (Ex. 9). It did so, in part, because Commissioners Fain and Graves did not believe one was necessary and believed that—if they hired a consultant—he or she would be used by the other two Commissioners for partisan advantage. Ex. 6, (53:12–57:1); Ex. 1, (274:22–275:21); Ex. 9, (75:5-19). Put differently, at least half of the voting Commission *did not* believe that a VRA-compliant district was required and did not want to hire an expert to see if one was. This failure alone dooms the State's VRA defense. How can the Commission have had "'a strong basis in evidence' for concluding that the [VRA] required," it to engage in "race-based districting" when half the voting Commissioners *did not conclude* that the VRA imposed such a requirement? *See Cooper*, 581 U.S. at 292; *Abbott v. Perez*, 138 S. Ct. 2305, 2334 (2018).

Hence, a majority of the Commissioners did not believe at the time they voted for the final map that it had actually satisfied the VRA, nor did they attempt to conduct any analysis to assess compliance, but instead subordinated VRA concerns to other priorities. And only two of the four voting Commissioners thought that compliance with the VRA was even necessary in the first place. As a majority of the Commission did not actually attempt to comply with the VRA when drawing and enacting an LD-15 where race plainly predominated, the State cannot now plausibly argue that the VRA justified its actions.

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2. The Commission Did Not Possess a Strong Basis to Believe that the Latino Community in Yakima and Pasco is Geographically Compact Enough to Constitute a Single-Member District.

The first *Gingles* precondition requires the State to show that the Hispanic population in Yakima and Pasco is "sufficiently large and geographically compact to constitute a majority in [the] single-member district" of LD-15. *Gingles*, 478 U.S. at 50. As a matter of law and undisputed fact, the Commission lacked good reason to believe this precondition was satisfied before drawing its race-based map.

First, the presentation provided by Dr. Barreto to the Democratic Caucus is facially deficient with respect to the first *Gingles* factor. As the plain terms of the factor make clear, a district must be "sufficiently large *and* geographically compact." *Id*. The analysis provided by Dr. Barreto as shown on the Powerpoint that was made public provides no analysis, none at all, that a *geographically compact* district can be drawn in the Yakama valley. Ex. 18. Upon examining Barreto's "VRA Compliant" map, it's easy to see why he did not include a compactness analysis as part of the presentation.

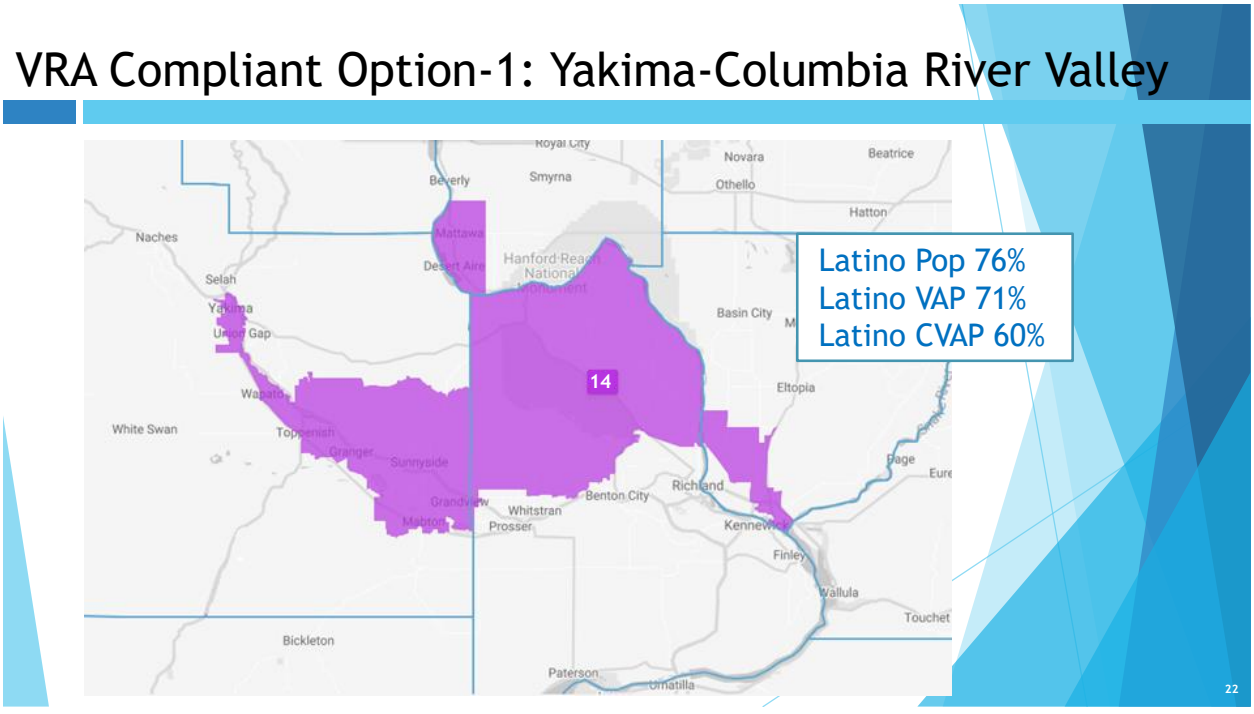

Figure 1: Dr. Barreto, "VRA Compliant Option-1: Yakima-Columbia River Valley," (Ex. 18)

As is plain from even a cursory glance at this map, it is not compact. Moreover, no compactness metric is given that would allow an outside observer to compare this map to the other districts to analyze its relative compactness.

Indeed, even if the Barreto analysis were more detailed on this point, it cannot—as a legal matter—serve as the only basis for the Commission to believe that the first precondition was met. As the Supreme Court has explained, "[a] group that wants a State to create a district with a particular design may come to have an overly expansive understanding of what §2 demands. So one group's demands alone cannot be enough." *Abbott v. Perez*, 138 S. Ct. 2305, 2334 (2018). But that was the only legal justification that could have led the Commission to believe that the first *Gingles* precondition was met.

Second, the other legal analysis—provided to at least half of the Commission—concluded that Dr. Barreto was wrong and that the first precondition was not met. DWT Memo., (Ex. 17). At least half the Commissioners were persuaded by the DWT Memo, as they did not believe the VRA required a majority-minority district here. Ex. 1, (122:01-11); Ex. 6, (129:9–15) ("[M]y general feeling at the time that was communicated to Commissioner Graves is that I did not feel that the Barreto analysis, despite not being deeply familiar with it, but I had concern about the objectivity of it and did not think it would be wise to solely rely on that analysis in determining what the -- what is or is not required relative to the VRA."). This alone undermines any insistence that the whole Commission possessed good reason to believe the compactness element was met or that the VRA required a majority-minority district.

Third, the shape of the enacted LD-15 suggests that it is not geographically compact. Although "a compactness determination should not hinge [solely] on the shape of a district, the shape of a district certainly cannot be disregarded in a compactness inquiry." *Sensley v. Albritton*, 385 F.3d 591, 596 (5th Cir. 2004); *see also Bush*, 517 U.S. at 979 ("If, because of the dispersion of the minority population, a reasonably compact majority-minority district cannot be created, § 2 does not require a majority-minority district."). Thus, because "the geographical shape of any proposed district necessarily directly relates to the geographical compactness and population

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dispersal of the minority community in question, it is clear that shape is a significant factor that courts can and must consider in a *Gingles* compactness inquiry." *Sensley*, 385 F.3d at 596. Here, the District crosses five county lines and bisects two of the largest cities in Central Washington. Enacted Legislative District 15 Map, https://app.leg.wa.gov/districtfinder/displaydistrict/15 (Ex. 22); *see also* Ex. 24.

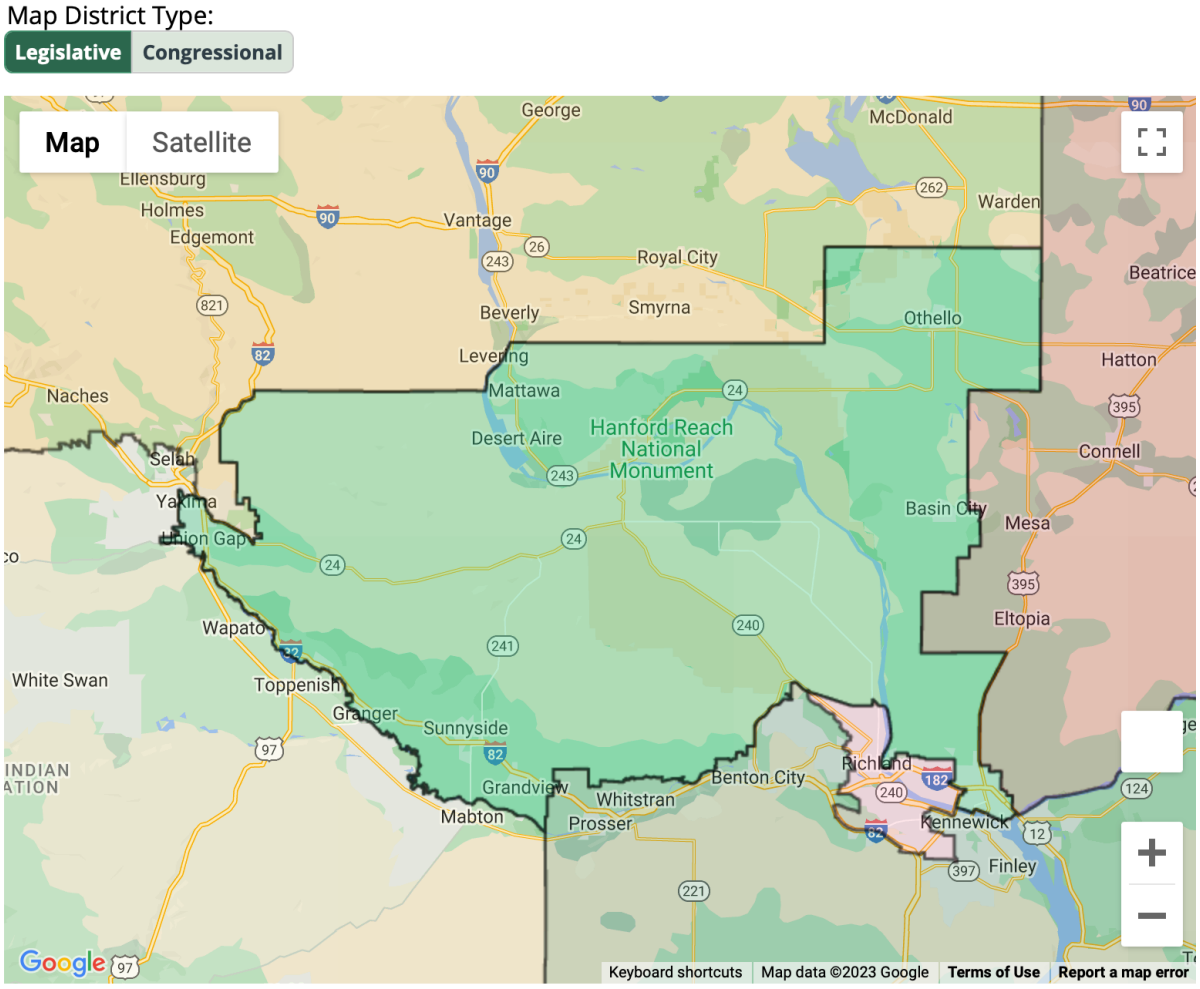

Figure 2: Enacted Legislative District 15 (Ex. 22)

Fourth, to join the portions of Yakima and Pasco, the Commission impermissibly "ignore[d] traditional districting principles such as maintaining communities of interest and traditional boundaries." *Sensley*, 385 F.3d at 598; *see also Abrams v. Johnson*, 521 U.S. 74, 92 (1997) ("[T]he § 2 compactness inquiry should take into account traditional districting principles such as maintaining communities of interest and traditional boundaries." (citation omitted)). The

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enacted LD15 exhibits two tendrils on either side that stretch to the southeast to encompass the City of Pasco and to the northwest to grab part of Yakima in order to incorporate greater numbers of Latino voters and raise the district's CVAP over 50%. Exs. 22, 24; Estrada Dep., (71:3-77:17) (discusses differences between Yakima and Pasco) (Ex. 32). At the same time, the southwestern boundary of the map stays resolutely north of State Highway 22 to avoid incorporating any parts of the Yakama Reservation, which is contained within the same county as the City of Yakima. *Id.*

Therefore, the Commissioners individually, and certainly the Commission as a whole, lacked either good reasons or a strong basis to believe that the Latino community is geographically compact enough to satisfy the first *Gingles* precondition. This failure alone dooms the State's defense. *See Covington v. North Carolina*, 316 F.R.D. 117, 167 (M.D.N.C. 2016) (three-judge panel), *summarily aff'd*, 137 S. Ct. 2211 (2017) ("Absent a strong basis in evidence for the three factors, Defendants would have had no reason to anticipate a potential Section 2 violation and therefore no reason to believe the race-based districting was necessary to comply with Section 2."). But this is not the State's only failure.

3. The Commission Did Not Possess a Strong Basis to Believe that Hispanics in the Yakima Valley are Politically Cohesive.

"The second *Gingles* precondition is satisfied where the minority group is politically cohesive—that is, where 'a significant number of minority group members usually vote for the same candidates.'" *Luna v. Cnty. of Kern*, 291 F. Supp. 3d 1088, 1117 (E.D. Cal. 2018) (quoting *Gingles*, 478 U.S. at 56). The Ninth Circuit has clarified that the political cohesiveness "inquiry is essentially whether the minority group has expressed clear political preferences that are distinct from those of the majority." *Gomez v. Watsonville*, 863 F.2d 1407, 1415 (9th Cir. 1988). Thus, "[i]f the minority group does not have a preferred candidate, it cannot be said that the jurisdiction's electoral scheme thwarts the minority group's interests." *Luna*, 291 F. Supp. 3d at 1117 (citing *Gingles*, 478 U.S. at 51); see also *Gomez*, 863 F.2d at 1415.

Importantly, "[p]olitical cohesiveness is frequently demonstrated through statistical evidence of racially polarized voting, though other non-statistical evidence may establish this factor as well." *Id.*; *see also Monroe v. City of Woodville*, 897 F.2d 763, 764 (5th Cir. 1990).

"Political cohesiveness must be proven with statistical evidence of historical voting patterns." *Montes v. City of Yakima*, 40 F. Supp. 3d 1377, 1401 (E.D. Wash. 2014); *see also Gomez*, 863 F.2d at 1415. "Election results from within the challenged voting system are most probative, although results from 'exogenous' elections may also be considered. *Montes*, 40 F. Supp. 3d at 1401–02 (quoting *United States v. Blaine Cnty.*, 363 F.3d 897, 912 (9th Cir. 2004)). "[T]he number of elections that must be analyzed to show polarized voting 'will vary according to pertinent circumstances.'" *DeBaca v. Cty. of San Diego*, 794 F. Supp. 990, 1000 (S.D. Cal. 1992) (quoting *Gingles*, 478 U.S. at 57 n.25). And "[i]t is even possible that statistics from just one election could" be enough. *Id.*

Additionally, in *Gomez*, the Ninth Circuit endorsed the Fourth and Fifth Circuit's view that a "racially polarized voting analysis," which combines the second and third *Gingles* factors, can establish political cohesiveness. *See Gomez*, 863 F.2d at 1415 (quoting *Collins v. City of Norfolk*, 816 F.2d 932, 935 (4th Cir. 1987), and *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988)); *see also Ruiz v. City of Santa Maria*, 160 F.3d 543, 551 (9th Cir. 1998).

The Commission never hired consultants to perform a racially polarized voting analysis for the *entire* Commission. Ex. 6, (53:12-22, 54:10-17); Ex. 9, (87:19-24). The Senate Democratic Caucus commissioned their own analysis from Dr. Barreto at UCLA, but according to Commissioner Sims this analysis "wasn't for the Commission" and, per their deposition testimony, Dr. Barreto's conclusions were not accepted by the Republican Commissioners. Ex. 3, (73:25-74:03); Ex. 2, (242:11-15); Ex. 1, (270:11-19) (testifying that Graves "wasn't persuaded" by" the Barreto memo); Ex. 6, (129:06-15) (expressing concerns about "the objectivity" of "the Barreto analysis"). This failure is fatal. *See DeBaca*, 794 F. Supp. at 1000 ("In the case at bar, however, the plaintiffs have not demonstrated minority bloc voting in even one election. The plaintiffs have developed no evidence to meet the second Gingles precondition."); *see also Abbott*, 138 S. Ct. at

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2334 ("[These] evidentiary items together . . . [are] simply too thin a reed to support the drastic decision to draw lines in this way."); *Cooper*, 581 U.S. at 306 (explaining that the Supreme Court will not "approve a racial gerrymander whose necessity is supported by no evidence and whose *raison d'etre* is a legal mistake").

4. The Commission Did Not Possess a Strong Basis to Believe that the Third *Gingles* Precondition Was Met.

"[C]ourts and commentators agree that racial bloc voting is a key element of a vote dilution claim." *Gingles*, 478 U.S. at 55 (collecting sources). "However, not all racial bloc voting rises to a level that is cognizable within the meaning of *Gingles*' third factor." *Covington*, 316 F.R.D. at 167. "'Racial bloc voting' or 'racially polarized voting' refers to the circumstance in which 'different races . . . vote in blocs for different candidates.'" *Id.* (quoting *Gingles*, 478 U.S. at 62);

Specifically, "the third *Gingles* precondition requires racial bloc voting that is 'legally significant'—that is, majority bloc voting at such a level that it enables the majority group 'usually to defeat the minority's preferred candidates.'" *Id.* (quoting *Gingles*, 478 U.S. at 56). It is true that "evidence of 'especially severe' racially polarized voting, in which there are few majority-group 'crossover' votes for the minority group's preferred candidate, can help support finding the existence of *Gingles*' third factor." *Id.* (citing *LULAC v. Perry*, 548 U.S. 399, 427 (2006) (explaining that racially polarized voting there was "especially severe" because, in part, 92% of Latinos voted against a candidate but 88% of non-Latinos voted for him)). However, "a general finding regarding the existence of any racially polarized voting, no matter the level, is not enough." *Id.*

Moreover, "[g]eneralized assumptions about the 'prevalence of racial bloc voting' do not qualify as a 'strong basis in evidence.'" *Harris v. McCrory*, 159 F. Supp. 3d 600, 624 (M.D.N.C. 2016) (quoting *Bush*, 517 U.S. at 994 (O'Connor, J., concurring)). Consequently, the "key inquiry under *Gingles'* third factor . . . is whether racial bloc voting is operating at such a level that it would actually minimize or cancel minority voters' ability to elect representatives of their choice, if no remedial district were drawn." *Covington*, 316 F.R.D. at 168 (quoting *Gingles*, 478 U.S. at

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56) (cleaned up). Thus, "to have a strong basis in evidence for the third *Gingles* precondition, a legislature must give consideration to the actual and potential effect of bloc voting on electoral outcomes." *Id.*; *see also Lewis v. Alamance Cty.*, 99 F.3d 600, 608 (4th Cir. 1996).

One piece of evidence that courts consider is whether the redistricting body relied on a racially polarized voting analysis. *See, e.g.*, *Covington*, 316 F.R.D. at 169–171 (analyzing the deficiencies in two racially polarized voting analyses, and concluding they were inadequate to establish the third *Gingles* precondition because, in part, neither spoke to the *effects* of racially polarized voting). As discussed *supra* at 24-25, the Commission never hired a VRA consultant to conduct a racially polarized voting analysis because they could not agree on a neutral analyst. *See also Abbott*, 138 S. Ct. at 2334 ("[These] evidentiary items together . . . [are] simply too thin a reed to support the drastic decision to draw lines in this way."); *Cooper*, 581 U.S. at 306.

Moreover, even if the entire Commission relied on Barreto's report—which they did not—it was inadequate as a matter of law because there is a difference between *legally significant* and *statistically significant* racially polarized voting. *Covington,* 316 F.R.D. at 170 (discussing difference between types of racially polarized voting).

Here, the Barreto presentation *may* have provided *statistically* significant evidence—meaning evidence that "cannot be attributed to 'chance alone," *id*.—but it did not provide *legally* significant evidence, "which occurs when the 'majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate,'" *id.* (quoting *Gingles*, 478 U.S. at 51, 55–56).

What's more, the evidence makes clear that the Commission as a whole did not rely on Dr. Barreto's presentation. Ex. 6, (193:14-19); Ex. 1, (122:01-11). Instead, individual Commissioners bargained with other Commissioners to trade a certain political composition for a certain racial composition in LD-15. Ex. 6, (120:16-23); Ex. 1, (279:21-280:01) (a majority-Hispanic-CVAP in LD-15 "was part of the agreement that Commissioner Sims and I reached"); Ex. 2, (203:20-204:06. Thus, regardless of the Barreto presentation, the Commission as a whole was engaged in political

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horse trading, not in VRA compliance. *See* Exs. 16; 11/14/21, Texts Between Sims and Meyers (Ex. 19), 11/2/21, Hall Email to Walkinshaw and Staff (Ex. 21).

CONCLUSION

For the foregoing reasons, the Court should grant summary judgment in favor of Mr. Garcia.

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DATED this 7th day of March, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing document with the Clerk of the Court of the United States District Court for the Western District of Washington through the Court's CM/ECF System, which will serve a copy of this document upon all counsel of record.

DATED this 7th day of March, 2023.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I certify that this Motion and accompanying memorandum contains 8,399 words, in compliance with the Local Civil Rules of the United States District Court for the Western District of Washington.

DATED this 7th day of March, 2023.

Respectfully submitted,

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Ex. 27	Sims Original Proposed Legislative Map
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Ex. 31	Removed
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Ex. 33	State of WA Members of the Legislature
Ex. 34	Deposition of Paul Campos
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