UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SUSAN SOTO PALMER, *et al*.,

Plaintiffs – Appellees,

v.

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

Defendants – Appellees,

and

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

Intervenor-Defendants – Appellants.

No. 23-35595

D.C. No. 3:22-cv-05035-RSL
U.S. District Court for Western Washington, Tacoma

APPELLANTS' MOTION TO STAY INJUNCTION AND LOWER COURT PROCEEDINGS

Relief Requested by: December 22, 2023

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INTRODUCTION

Blazing a new trail, the court below concluded that a majority-Hispanic state legislative district that recently elected a female Hispanic candidate by 35-points must be redrawn with a *higher* Hispanic Voting Age Population. This augmentation of the Voting Rights Act cannot be squared with any previous VRA jurisprudence (or with the Equal Protection Clause). To avoid irreparable harm—and under Ninth Circuit Rule 27-1(3)—Appellants seek a stay of remedial proceedings below and **request relief by December 22, 2023.**

RELIEF REQUESTED

By virtue of Federal Rule of Appellate Procedure 8, Intervenor-Defendants-Appellants Jose A. Trevino, Ismael G. Campos, and Alex Ybarra ("Appellants") respectfully move the Court to stay all proceedings in this case, both in the merits appeal at this Court and the remedial proceedings below, pending resolution of *Garcia v. Hobbs*, No. 23-467 (jurisdictional statement filed Oct. 31, 2023), and the related *Trevino v. Soto Palmer*, No. 23-484 (petition for writ of certiorari before judgment filed Nov. 3, 2023), both of which are currently pending in the Supreme Court of the United States.[1]

[1] A partial extension for a response was granted in *Garcia*. While the State asked for a 60-day extension, the Responses are to be filed December 27, 2023. *Trevino*, meanwhile, has been distributed for conference of December 8, 2023.

STATEMENT OF THE CASE & FACTS

On August 10, 2023, the district court found that the boundaries of Washington Legislative District 15 ("LD-15") "violate[d] Section 2's prohibition on discriminatory results." (*Soto Palmer* ECF No. 218 at 3.)[2] The district court entered judgment for Plaintiffs-Appellees on August 11, 2023, (*Soto Palmer* ECF No. 219), and Appellants filed their Notice of Appeal to this Court on September 8, 2023. (*Soto Palmer* ECF No. 222.)

The same day that Appellants appealed the *Soto Palmer* decision, the *Garcia* Court issued its decision in *Garcia v. Hobbs*, No. 3:22-cv-05152, 2023 U.S. Dist. LEXIS 159427 (W.D. Wash. Sept. 8, 2023), a case that challenged the same legislative district as a racial gerrymander in violation of the Fourteenth Amendment. (*See Garcia* ECF No. 81.) Because the district court had entered final judgment in *Soto-Palmer*, the *Garcia* panel majority held that Mr. Garcia's Equal Protection claim was moot. (*Id.* at 1–2.) Judge VanDyke dissented, explaining not only that he would have reached the merits, but that he would have found that LD-15 violated the Equal Protection Clause. (*Garcia* ECF No. 81-1.)

[2] Citation to the docket in *Soto Palmer v. Hobbs*, No. 3:22-cv-05035-RSL appear here as "*Soto Palmer* ECF No. ##," and citations to docket of the related case *Garcia v. Hobbs*, No. 3:22-cv-05152-RSL-DGE-LJCV appear here as "*Garcia* ECF No. ##." Both cases originated in the United States District Court for the Western District of Washington. All cited record materials from the *Soto Palmer* and *Garcia* district court dockets are included in an appendix attached to this filing.

Garcia (which was heard by a three-judge court pursuant to 28 U.S.C. § 2284) and *Soto Palmer* (which was heard by a single district court judge) proceeded on separate appellate tracks. *See* Juris. Statement, *Garcia v. Hobbs*, No. 23-467 (Oct. 31, 2023); (*Soto Palmer* ECF No. 222) (filing a notice of appeal to the United States Court of Appeals for the Ninth Circuit in *Soto Palmer*).

Presently, the district court is proceeding with the remedial phase in *Soto Palmer*. (*See Soto Palmer* ECF No. 230.) The *Soto Palmer* Parties are required to "meet and confer with the goal of reaching a consensus on a legislative district map that will provide equal electoral opportunities for both white and Latino voters in the Yakima Valley regions, keeping in mind the social, economic, and historical conditions discussed in the Memorandum of Decision." (*Id.* at 2) If by December 1, 2023, the Parties had not reached an agreement, they were required to file alternative remedial proposals and jointly identify three candidates to serve as a special master. (*Id.* at 2–3.) Under this scenario, the Parties must then have their memoranda and exhibits submitted in response to the remedial proposals by December 22, 2023, and any reply submitted by January 5, 2024. (*Id.* at 3.)

Meanwhile, Appellants in this case filed a petition for writ of certiorari before judgment, *see Trevino v. Soto Palmer*, No. 23-484, and Mr. Garcia filed his jurisdictional statement, *see Garcia v. Hobbs*, No. 23-467. Mr. Garcia maintains that his case is not moot and should be decided on the merits. (*See id.*) *Soto Palmer*

Appellants argue that the Supreme Court should grant review of their case and hold it in abeyance pending the outcome in *Garcia*, which necessarily affects what (if any) remedy is available in *Soto Palmer*. *See* Pet. for Cert. before J., *Trevino v. Soto Palmer*, No 23-484 (Nov. 3, 2023). And *Soto Palmer* Plaintiffs-Appellees have sought to intervene in *Garcia*, arguing that the Supreme Court's decision in *Garcia* will affect the remedy available (if any) in *Soto Palmer*. *See* Susan Soto Palmer et al. Mot. for Leave to Intervene, *Garcia v. Hobbs*, No. 23-467 (Nov. 9, 2023).

Consequently, to further the important interests of judicial comity and efficiency, Appellants sought an emergency stay of the district court's remedial proceedings pending the result of the *Soto Palmer* and *Garcia* appeals that are presently before the Supreme Court. (*Soto Palmer* ECF No. 232.) Appellants requested that the district court rule by November 17, 2023. (*Id.* at 12.) The district court denied their motion on November 27, 2023. (*Soto Palmer* ECF No. 242.)

The district court has ordered the parties to meet and confer and propose a remedial plan (or alternative plans and three special master candidates) by December 1. This has created an avoidable time crunch in the court below that necessitates this time-sensitive Motion to Stay. If a stay is not granted here, Appellants will be irrevocably injured, and the parties and courts may waste considerable time and resources on a remedial plan that will ultimately prove pointless. Accordingly, this Court should grant Appellants' important Motion to Stay.

ARGUMENT

The power and discretion to stay a case "is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). "How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Id.* at 254–55.

> When deciding whether to grant a stay pending appeal, a court considers four factors: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Duncan v. Bonta, 83 F.4th 803 (9th Cir. 2023) (en banc) (quoting *Nken v. Holder*, 556 U.S. 418, 425–26 (2009)). Of the four factors, likelihood of success on the merits and irreparable injury to the applicant are "most critical." *Nken*, 556 U.S. at 434.

When considering whether to stay a matter pending resolution of a separate related action, this Court considers the following: (1) "the possible damage which may result from the granting of a stay"; (2) "the hardship or inequity which a party may suffer in being required to go forward"; and (3) "the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay." *Lockyer v. Mirant Corp.*, 398

F.3d 1098, 1110 (9th Cir. 2005) (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962)).

Here, because these tests—both for a stay pending appeal (1) of the instant case and (2) of the related *Garcia* case—weigh decisively in favor of a stay, the Court should grant Appellants' Motion.

A. Appellants will likely succeed on the merits of their appeal.

Multiple errors strongly suggest that Appellants will prevail, not least of which is the district court's novel conclusion that the Voting Rights Act requires a performing majority-minority district to be even *more* majority-minority. This conclusion flouts both the preconditions and totality of the circumstances analyses set out in *Thornburg v. Gingles*, 478 U.S. 30 (1986). More generally, this order is anathema to the purposes of Section 2.

The errors persist beyond that. Nearly two decades ago, the Supreme Court clarified that "[t]he first *Gingles* condition refers to the compactness of the minority population, not to the compactness of the contested district.'" *LULAC v. Perry*, 548 U.S. 399, 433 (2006) (quoting *Bush v. Vera*, 517 U.S. 952 (1996)). The district court, however, considered only the compactness of the outer boundaries in Plaintiffs-Appellees' demonstrative maps, and not the compactness of Hispanic voters within those boundaries. (*See Soto Palmer* ECF No. 218 at 10.) Aside from Dr. Owens (Appellants' expert), not a single expert in this case considered the compactness of

the minority community. The court, nonetheless, errantly found this precondition satisfied. And, as to the first precondition, Plaintiffs-Appellees failed to provide any alternative map that would realistically succeed in doing what they want—electing what they consider the Hispanic-preferred candidate by defeating Nikki Torres in LD-15. *See Rose v. Raffensberger*, No. 22-12593 (11th Cir. Nov. 24, 2023) (slip op. at 20) (requiring Section 2 plaintiffs to provide a "viable" proposed remedy as part of the first precondition).

The district court also erred in its racially polarized voting analysis, which considers whether a "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). For example, the district court's *Gingles II* analysis lasted all of one paragraph and was no "intensely local appraisal," flatly ignoring the "present reality" in the Yakima Valley—namely, the landslide election of a Hispanic Republican over a White Democrat. *See Allen v. Milligan*, 143 S. Ct. 1487, 1503 (2023) (quoting *Gingles*, 478 U.S. at 79). Put differently, the lower court's eschewal of the election results in the only contested election held under the challenged map was legal, reversible error. *Id.* Indeed, to undersigned Counsel's knowledge, the *Soto Palmer* court is the only court to ever find that a majority-minority citizen voting age population district, which resulted in the landslide election of a minority candidate,

somehow dilutes the voting power of that minority group. Such a novel result is not likely to survive the appellate process—either in this Court or in the Supreme Court.

Moreover, the district court's totality of the circumstances analysis failed to apply the correct legal standards in at least three ways. Specifically, (1) the court found that certain "usual burdens of voting" evidenced an abridgment of the right to vote, *contra Brnovich v. DNC*, 141 S. Ct. 2321, 2338 (2021) (internal citation omitted); (2) the court's appraisal was neither "intense[]" nor "local," nor did it take into account "past and present reality," *Milligan*, 143 S. Ct. at 1503, such as the recent election of Nikki Torres; and (3) the court continuously failed to identify the required causal nexus between the challenged map and the purported discriminatory result, brushing aside the evidence that partisanship, not race, drives voting patterns in the Yakima Valley, *see, e.g.*, *LULAC v. Clements*, 999 F.2d 831, 853–54 (5th Cir. 1993) ("Courts must undertake the additional inquiry into the reasons for, or causes of, these electoral losses in order to determine whether they were the product of 'partisan politics' *or* 'racial vote dilution,' 'political defeat' *or* 'built-in bias.'") (internal citation omitted); *see also Baird v. Indianapolis*, 976 F.2d 357, 361 (7th Cir. 1992) ("[The VRA] does not guarantee that nominees of the Democratic Party will be elected, even if [minority] voters are likely to favor that party's candidates.").

These are the most likely-to-be-reversed errors in the *Soto Palmer* decision. Any one of them would result in vacatur of the injunction. Thus, Appellants are

likely to succeed on appeal, a "most critical" factor weighing heavily in favor of granting the stay. *See Nken*, 556 U.S. at 434.

B. Unconstitutional racial sorting of Appellants is imminent.

The Supreme Court permits *some* use of race in remedial mapmaking. *See Milligan*, 143 S. Ct. at 1507–08. And it has long "assume[d], without deciding, that the State's interest in complying with the Voting Rights Act" can qualify as "compelling." *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 193 (2017). But undisturbed precedent mandates that if a State *does* sort citizens into different voting districts on the basis of race, it must have "extraordinary justification" to do so. *Miller v. Johnson*, 515 U.S. 900, 911 (1995).

"[A]ll 'racial classifications, however compelling their goals,' [a]re 'dangerous,'" thus all "race-based governmental action" is subject to strict scrutiny. *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 143 S. Ct. 2141, 2165 (2023) (quoting *Grutter v. Bollinger*, 539 U.S. 306, 341–42 (2003)) (emphasis added). Indeed, "[d]istinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." *Id.* at 2162 (quoting *Rice v. Cayetano*, 528 U.S. 495, 517 (2000)). The "core purpose" of the Equal Protection Clause remains "do[ing] away with all governmentally imposed discrimination based on race." *Id.* at 2161 (quoting *Palmore v. Sidoti*, 466 U.S. 429, 432 (1984)). It is, after all, "a

sordid business, this divvying us up by race[,]" *Perry*, 548 U.S. at 511 (Roberts, C.J., concurring in part and dissenting in part), and "[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race[,]" *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007).

Most relevant here, the Supreme Court has been clear for decades: racial classification in redistricting causes a "fundamental injury" to the individual rights of a person sorted by his race. *Shaw v. Hunt*, 517 U.S. 899, 908 (1996). Under the *Shaw II* reasoning, racial sorting causes an irreparable injury, *even if* it is justified. *Id*. In other words, unconstitutional racial sorting is undeniably irreparable harm, as Appellants have repeatedly explained. *See Soto Palmer* ECF No. 57 at 6–7; ECF No. 232 at 11.

At this point (starting on December 1), Appellants are being subjected to a map-drawing process that will not just "take into account" race—it will necessarily and inexorably fixate on particular racial targets that far exceed what the Equal Protection Clause permits or what Section 2 requires. That is because the court below, given its finding that a Section 2 violation occurred, has ordered that a "super" majority-minority district be drawn in the Yakima Valley that performs better for the Democrat Party's candidates. *See Perry*, 548 U.S. at 517 (Scalia, J., concurring in judgment in part and dissenting in part) ("[W]hen a legislature intentionally creates a majority-minority district, race is necessarily its predominant

motivation and strict scrutiny is therefore triggered."). Compliance with that order will require the map drawers to put some citizens here, and others there, primarily based on their race, to achieve the desired percentage targets. No one disputes that this is court-ordered racial targeting.

Redrawing a majority Hispanic CVAP map to include a *greater* percentage of Hispanic CVAP is *not* justified by compliance with the VRA, as Appellants are likely to show on appeal. Therefore, any racial sorting that occurs in December will be unjustified and unconstitutional, thus irreparably harming Messrs. Trevino, Campos, and Ybarra.

Mr. Trevino lives in current LD-15 and will therefore be among those sorted based on race. But Messrs. Campos and Ybarra, as Hispanic voters in neighboring districts, are likely to be subjected to it as well in the same process. That is how map drawing operates. Intentionally increasing Hispanic CVAP in one district will necessarily involve moving in Hispanic voters from other neighboring districts because they are Hispanic.

For the reasons stated above, Appellants are likely to show that the Section 2 violation finding was erroneous. That reversal will eliminate the need for racial sorting in the imminent remedial phase. More basically, *Shaw II* stated that such racial sorting constitutes a "fundamental injury" to the individual, whether justified or not. 517 U.S. at 908.

Therefore, Appellants face irreparable harm now.

C. The Supreme Court's ruling in *Garcia* will affect (or foreclose) the remedy in this case.

This Circuit recognizes that a "court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case." *Leyva v. Certified Grocers of Ca.*, 593 F.2d 857, 863–64 (9th Cir. 1979). Others have likewise determined that "await[ing] a federal appellate decision that is likely to have a substantial or controlling effect on the claims and issues in" a case is "at least a good . . . if not an excellent" reason to stay that case. *See, e.g.*, *Miccosukee Tribe of Indians of Fla. v. S. Fla. Water Mgmt. Dist.*, 559 F.3d 1191, 1198 (11th Cir. 2009).[3]

[3] *See also, e.g.*, *Nairne v. Ardoin*, No. 22-178-SDD-SDJ2022 U.S. Dist. LEXIS 155706, at *7 (M.D. La. Aug. 30, 2022) (staying case pending Supreme Court's decision in *Merrill* "in the interest of avoiding hardship and prejudice to the parties and in the interest of judicial economy"); *Johnson v. Ardoin*, No. 3:18-cv-625 (M.D. La. Oct. 17, 2019) (ECF No. 133) (granting stay pending en banc consideration of a Voting Rights Act issue); *United States v. Macon*, No. 1:14-CR-71, 2016 U.S. Dist. LEXIS 169380, at *4 (M.D. Pa. Dec. 7, 2016) (staying case pending Supreme Court resolution of similar issues); *Tel. Sci. Corp. v. Asset Recovery Sols., LLC*, No. 15 C 5182, 2016 U.S. Dist. LEXIS 581, at *8 (N.D. Ill. Jan. 5, 2016) (similar); *McGregory v. 21st Century Ins. & Fin. Servs., Inc.*, No. 1:15-cv-98, 2016 U.S. Dist. LEXIS 197541 at *12 (N.D. Miss. Feb. 2, 2016) (similar); *Bozeman v. United States*, No. 3:16-cv-1817-N-BN, 2016 U.S. Dist. LEXIS 140672, at *3 (N.D. Tex. Jul. 11, 2016) (similar); *Fernandez v. United States*, No. 4:16-CV-409-Y, 2016 U.S. Dist. LEXIS 140192, at *2 (N.D. Tex. Jul. 15, 2016) (similar); *Alford v. Moulder*, No. 3:16-CV-350-CWR-LRA, 2016 U.S. Dist. LEXIS 143292, at *7 (S.D. Miss. Oct. 17, 2016) (similar); *Kamal v. J. Crew Grp., Inc*., Civil Action No. 15-0190 (WJM), 2015 U.S. Dist. LEXIS 172578, at *4 (D.N.J. Dec. 29, 2015) (staying action pending the

Here, the issues in *Soto Palmer* and *Garcia* are inextricably intertwined. Indeed, the majority's decision in *Garcia* assumed as much. (*See Garcia* ECF No. 81 at 2) (premising its mootness conclusion on the court's decision in *Soto Palmer*). So do Plaintiff-Appellees. *See* Reply in Supp. of Susan Soto Palmer et al. Mot. For Leave to Intervene, *Garcia v. Hobbs*, No. 23-467 (Nov. 20, 2023). Consequently, the issues and legal standards now pending before the Supreme Court in the related *Garcia* case are directly relevant to this case and will determine what (if any) remedy should be entered here. And the Supreme Court must render a decision on *Garcia* because of the appellate posture, increasing the likelihood that that case will directly affect this one, and soon.

As argued in the *Garcia* and *Trevino* filings now pending before the Supreme Court, *Garcia* should have been decided on the merits before *Soto Palmer*. Juris. Statement, *Garcia v. Hobbs*, No. 23-467 (Oct. 31, 2023); *see also* Pet. For Cert. Before J., *Trevino v. Soto Palmer*, No. 23-484 (Nov. 3, 2023). Mr. Garcia requested that the Supreme Court reverse or vacate the *Garcia* majority's errant jurisdictional dismissal and remand that case to the three-judge district court for consideration of

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Supreme Court's decision in a separate but related action, and citing decision of nine federal district courts staying similar cases); *Couick v. Actavis, Inc.*, No. 3:09-CV-210-RJC-DSC, 2011 U.S. Dist. LEXIS 10094, at *4 (W.D.N.C. Jan. 25, 2011) (similar); *Homa v. Am. Express Co.*, Civil Action No. 06-2985 JAP, 2010 U.S. Dist. LEXIS 110518, at *22–26 (D.N.J. Oct. 18, 2010) (similar); *Michael v. Ghee*, 325 F. Supp. 2d 829, 831–33 (N.D. Ohio 2004) (similar).

the merits. Petitioners in *Trevino* (the *Soto Palmer* Appellants) requested that the Court grant Appellants' petition for writ of certiorari before judgment and hold the *Soto Palmer* case in abeyance pending the results of *Garcia*. *See* Pet. for Cert. Before J., *Trevino v. Soto Palmer*, No. 23-484; *see also Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022).

Should the Supreme Court follow this course of action and remand *Garcia*, one of two scenarios will likely result. First, if the *Garcia* district court reaches the correct decision, Mr. Garcia will be victorious, and the *Garcia* district court can order the State to redraw its legislative map without race as the predominant consideration for LD-15. If the State appeals, the Supreme Court could hear both *Soto Palmer* and *Garcia* together. If the State does not appeal, and the panel's order becomes final and conclusive, the Supreme Court could then vacate the *Soto Palmer* decision and remand to the district court here to dismiss this proceeding as moot because the map enacted by the Redistricting Commission would be void, thereby eliminating the map that *Soto Palmer* Plaintiffs-Appellees challenged. (*See Garcia* ECF No. 81-1 at 11–12.)

Alternatively, if the *Garcia* district court follows through on what the panel majority telegraphed and finds that LD-15 was not a racial gerrymander, the result would likely be an immediate appeal of the three-judge district court's merits decision to the Supreme Court. At that point, the Supreme Court could—as in the

alternative scenario above—consider both cases simultaneously and issue a ruling that resolves the clash between the Equal Protection and Section 2 claims.

In either eventuality, it makes little sense for the remedial proceedings in *Soto Palmer* to continue. Surely, the proceedings above will have a bearing on the outcome of the remedial process below. Most directly, if the Supreme Court agrees that the *Soto Palmer* decision should be vacated and the case mooted, the current remedial process—in which the parties are now engaged—would be rendered a nullity. This alone warrants waiting to see how the Supreme Court addresses the issues now pending before it.

D. The interests of judicial economy favor granting a stay.

The "orderly course of justice" factor is synonymous with the interests of "judicial economy." *Naini v. King Cnty. Pub. Hosp. Dist. No. 2.*, No. C19-0886-JCC, 2020 U.S. Dist. LEXIS 15015, at *7 (W.D. Wash. Jan. 29, 2020). This factor is satisfied in cases that "will be easier to decide at some later date." *Sarkar v. Garland*, 39 F.4th 611, 619 (9th Cir. 2022). "[E]ven if a stay is not necessary to avoid hardship, a stay can be appropriate if it serves the interests of judicial economy." *Naini*, 2020 U.S. Dist. LEXIS 15015, at *7.

As explained above, the likely result of the *Garcia* and *Soto Palmer* appeals (including the *Trevino* Petition) is that the current *Soto Palmer* remedial phase will be an exercise in futility. Judicial economy disfavors proceeding with an intensive

remedial process—likely involving a special master and competing expert analyses—when that entire process will be rendered unnecessary by the Supreme Court's decision in *Garcia*.

Regardless of where this Court (or the trial court) stands on the merits of this case (or on any of the pending appellate proceedings), the prudent and efficient way to handle the present situation is to pause the remedial proceedings before the *Soto Palmer* district court, stay the merits appeal before this Court, and let the Supreme Court sort through and decide the myriad of related legal questions that affect both *Soto Palmer* and *Garcia*. To have the presently pending remedial process in *Soto Palmer* lead to a new map and potentially new elected representatives, only to have those changes quickly reversed in either the appellate proceedings of this case or *Garcia*, would lead to voter confusion and increased costs and burdens on the State. To avoid this confusion, the Court should stay the *Soto Palmer* remedial proceedings and merits appeal while the appellate process plays out in the Supreme Court.

E. The likely hardship to all parties from having to litigate a fact-intensive remedial process favors granting a stay.

Section 2 claims are fact- and resource-intensive inquiries. *Milligan*, 143 S. Ct. at 1503 ("Before courts can find a violation of § 2, . . . they must conduct 'an intensely local appraisal' of the electoral mechanism at issue, as well as a 'searching practical evaluation of the "past and present reality."'") (citation omitted). It would be a hardship on all parties to participate in a fact- and resource-intensive remedial

process that may likely be unnecessary. What's more, imposing a map that requires more racial sorting, where none is required by Section 2 (which Appellants, if proceeding to the merits, would be likely to show on appeal), is per se harm to Intervenors. *See Cooper v. Harris*, 581 U.S. 285, 292–93 (2017).

Furthermore, a denial of stay would put the voters of the greater Yakima Valley region at a grave risk that this Court may impose a remedial map that is then vacated by the Supreme Court (or even this Court). Going through a remedial process, only to later learn that it was all for nothing, would result in an extreme (and harmful) waste of party and judicial resources, and risk increasing voter mistrust in elections. Such a waste would necessarily harm all parties.

F. A stay will not harm Plaintiffs-Appellees.

By contrast, Plaintiffs-Appellees are unlikely to suffer harm or prejudice from a stay because they are likely to be in the same position either way. Until *Garcia* is resolved, Plaintiffs-Appellees will have no basis for assurance that—even if they are 100 percent satisfied with the result of the remedial process—this Court's or the *Garcia* district court's rulings will withstand appeal. Any remedial plan enacted based on an errant decision in this matter or *Garcia* would be doomed post-appeal. That means Plaintiffs-Appellees have little prospect of being differently situated without a stay as with one—except that, without one, they will have exhausted an enormous amount of resources, including in legal fees. Either way, the path to any

enduring victory for them will inevitably be *through* whatever decisions are reached in the pending appeals.

It also must be emphasized that "[t]he harms that flow from racial sorting include being personally subjected to a racial classification as well as being represented by a legislator who believes his primary obligation is to represent only the members of a particular racial group." *Bethune-Hill*, 580 U.S. at 187 (internal quotation omitted). That harm works against all Washingtonians, including Plaintiffs-Appellees.

Therefore, the balance of the equities also weighs in favor of staying this case.

CONCLUSION

Because the standard for granting a stay pending decisions in the appeals of this case and *Garcia* to the Supreme Court favors granting the stay, this Court should (1) stay the *Soto Palmer* district court's remedial process pending all appeals and (2) stay the *Soto Palmer* merits appeal before this Court pending resolution of the *Trevino* appeal and the *Garcia* case by the Supreme Court.

Given the time-sensitive nature of this stay, the expedited remedial timeline, and the appeals pending before the Supreme Court, Appellants request that Plaintiffs respond to this motion by December 15 (i.e., the ordinary time permitted by Federal Rule of Appellate Procedure 27(a)(3)(A) without extension). Appellants will then

file a reply the next business day on December 18 and request a ruling from this Court by December 22, 2023.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(B) and Circuit Rule 27-1(1)(d) because this motion contains 4,616 words spanning 19 pages, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 27(a)(2)(B) and 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Times New Roman size 14-point font with Microsoft Word.

Dated: December 5, 2023

/s/ Jason Torchinsky
Jason Torchinsky

CERTIFICE OF SERVICE

I hereby certify that on December 5, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system, which will notify all registered counsel.

/s/ Jason Torchinsky
Jason Torchinsky

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SUSAN SOTO PALMER, *et al*.,

Plaintiffs – Appellees,

v.

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

Defendants – Appellees,

and

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

Intervenor-Defendants – Appellants.

No. 23-35595

D.C. No. 3:22-cv-05035-RSL
U.S. District Court for Western Washington, Tacoma

APPENDIX TO APPELLANTS' MOTION TO STAY INJUNCTION AND LOWER COURT PROCEEDINGS

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The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT TACOMA

SUSAN SOTO PALMER et al.,

Plaintiffs,

v.

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

Defendants,

and

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

Proposed Intervenor-Defendants.

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

MOTION TO INTERVENE

NOTE ON MOTION CALENDAR: April 15, 2022

Proposed Intervenor-Defendants Jose Trevino, Ismael G. Campos and State Representative Alex Ybarra ("Intervenors") respectfully move for leave to intervene in the above-captioned matter, as a matter of right pursuant to Fed. R. Civ. P. 24(a) or, in the alternative, permissively pursuant to Fed. R. Civ. P. 24(b). In accordance with Fed. R. Civ. P. 24(c) and Local Rules W.D. Wash. LCR 7(b)(1), the grounds for intervention and arguments in support thereof are set forth below.

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Counsel for Intervenors have consulted with counsel for Plaintiffs and Defendants. Defendants Hobbs, Jinkins and Billig do not object to intervention, but Plaintiffs have indicated they will oppose the motion.

Pursuant to Fed. R. Civ. P. 24(c), Intervenors are filing their Answer to Complaint for Declaratory and Injunctive Relief in conjunction with this motion. Intervenors further provide notice of their intent to submit additional filings, including a response in opposition to Plaintiffs' motion for preliminary injunction[1] and a motion to dismiss. Intervenors do not seek modifications to the Court's Minute Order Setting Trial Dates and Related Dates (Dkt. # 46).

INTRODUCTION

This action concerns the decennial apportionment of state legislative districts performed by the Washington State Redistricting Commission (the "Commission"). In particular, Plaintiffs have challenged the validity of the Commission's legislative redistricting plan in the greater Yakima Valley region under Section 2 of the Voting Rights Act ("VRA"). Intervenors strenuously dispute Plaintiffs' legal claims and political aims. They have chosen to intervene, in part, because the current posture of the case lacks a true "adversarial presentation of the issues." (Notice That Def. Hobbs Takes No Position, Dkt. # 40 at 2.)

Intervenors, all of whom are Hispanic and registered voters in Central Washington, are:

- Jose Trevino, a resident of Granger,
- Ismael Campos, a resident of Kennewick, and
- State Representative Alex Ybarra, a resident of Quincy.

All three Intervenors are registered to vote in their respective legislative districts and each intends to vote in future elections. As a voter in Legislative District 15,[2] Mr. Trevino has an obvious stake in this case. Mr. Campos, who resides in Legislative District 8, just beyond the boundaries of

[1] In light of significance of the issues presented in this case, Intervenors respectfully request that, if the Court grants this Motion to Intervene and/or Defendant Hobbs' Motion to Join Required Parties (Dkt. # 53), it also consider extending briefing schedules for responses in opposition to Plaintiffs' Motion for Preliminary Injunction so that the Court can benefit from a full adversarial presentation of the issues.

[2] For clarity, references to the legislative districts of each Intervenor refer to the new versions of legislative districts under the Commission's redistricting plan.

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Legislative District 15, could easily find himself located in a new or significantly redrawn legislative district if Plaintiffs' claim is successful. And while Representative Ybarra's hometown of Quincy is unlikely to be drawn into a Yakima Valley-centered district, the boundaries of his Legislative District 13—where he is currently and actively running for reelection—would almost certainly shift to accommodate any Court-mandated change to Legislative Districts 14 or 15. Clearly, Intervenors have a significant interest in this case. But the unusual posture of this case[3] means that none of the present parties will adequately protect those interests. Thus, not only do these factors and others justify intervention as more fully detailed below, but granting this motion will also ensure full adversarial presentation of the issues.

ARGUMENT

Intervention is warranted on multiple grounds.

I. Intervention as of Right under Rule 24(a)

Intervenors are entitled to intervene as a matter of right in this case. Fed. R. Civ. P. 24(a) requires that "[o]n timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." That is, Rule 24(a) "entitles intervention of right when an applicant: (i) timely moves to intervene; (ii) has a significantly protectable interest related to the subject of the action; (iii) may have that interest impaired by the disposition of the action; and (iv) will not be adequately represented by existing parties." *Oakland Bulk & Oversized Terminal, LLC v. City of Oakland*, 960 F.3d 603, 620 (9th Cir. 2020) (citing *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006)). As discussed below, all

[3] Plaintiffs chose not to sue the Commission, the "most natural" defendant (Def. Hobbs' Resp. to Defs. Jinkins and Billig's Mot. to Dismiss, Dkt. # 45 at 1), and thus far, the Commission has declined to intervene itself, *see, e.g.*, Jim Brunner, *WA redistricting commission chair resigns after Democrats refuse to defend new maps*, The Seattle Times, Mar. 7, 2022, https://www.seattletimes.com/seattle-news/politics/wa-redistricting-commission-chair-resigns-after-democrats-refuse-to-defend-new-maps/. Defendants Billig and Jinkins have moved to be dismissed as Defendants (*see* Mot. to Dismiss Defs. Jinkins and Billig, Dkt. # 37), and Defendant Hobbs has "notifie[d] the Court that he intends to take no position on the issue of whether the state legislative redistricting plan violates section 2 of the Voting Rights Act" (Notice That Def. Hobbs Takes No Position, Dkt. # 40 at 2; *see also* Def. Hobbs' Resp. to Pls.' Mot. for Prelim. Inj., Dkt. # 50 at 7-8).

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four elements are satisfied here. (Intervenors also note that, although they have "the burden to show that these four elements are met, the requirements are broadly interpreted in favor of intervention" *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) (citing *Prete*, 438 F.3d at 954)).

A. Timeliness

Intervenor's application is timely, which is "determined by the totality of the circumstances facing would-be intervenors, with a focus on three primary factors: '(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay.'" *Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016) (quoting *United States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004)).

The proceedings are at a very preliminary stage. Plaintiffs filed their Complaint for Declaratory and Injunctive Relief (Dkt. # 1) on January 19, 2022. Plaintiffs then filed a Motion for Preliminary Injunction (Dkt. # 38) on February 25, which was noted for consideration by the Court on March 25. Given that no oral arguments have been heard, or even (to Intervenor's knowledge) scheduled, and that the Court has not yet ruled on any substantive motions, a more "preliminary stage" of litigation could hardly exist than the present stage of this case. *Cf. LULAC v. Wilson*, 131 F.3d 1297, 1303 (9th Cir. 1997) (denying intervention as of right where "the district court has substantively—and substantially—engaged the issues" involved in the case).

In part because the case is at such a preliminary stage, there is no discernable prejudice or delay to either Plaintiffs or Defendants that would result in granting the proposed intervention. As mentioned, the Court has not yet ruled on the pending Motion to Dismiss Defendants Laurie Jinkins and Andrew Billig (Dkt. # 37) or Plaintiffs' Motion for Preliminary Injunction (Dkt. # 38). Nor do Intervenors seek changes to the dates established in the Court's Minute Order Setting Trial Dates and Related Dates (Dkt. # 46).

Given the early stage of the proceedings, there is hardly a "delay" for Intervenors to justify. But even if there were, "[t]he crucial date for assessing the timeliness of a motion to intervene is when proposed intervenors should have been aware that their interests would not be adequately

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protected by the existing parties." *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (citing *Wilson*, 131 F.3d at 1304). For Intervenors, this date was March 21, when Defendants filed their respective Responses to Plaintiffs' Motion for Preliminary Injunction (Dkts. # 49-50). While Intervenors appreciate Defendant Hobbs' articulation of the *Purcell* principle and his explanation of all the work his office performs in order to successfully manage Washington's elections (*see* Dkt. # 50 at 8-16), as well as Defendants Jinkins and Billig's summary of VRA jurisprudence (*see* Dkt. # 49 at 9-14), neither response brief argues that Plaintiffs' VRA claim is unlikely to succeed on the merits, or even applies VRA caselaw to Plaintiffs' allegations. The "delay" to intervene, then, has been one week. It is eminently reasonable for Intervenors to spend a week (a) assessing the potential outcomes of the case given the lack of briefing on the merits of Plaintiffs' VRA claim, (b) deciding whether to move to intervene as parties themselves and (c) preparing the necessary court filings to do so. *Cf. Smith v. Marsh*, 194 F.3d at 1052 (noting that prospective intervenors' "determin[ation] that their interests were inadequately represented only after reviewing closely the briefs filed . . . could constitute a proper explanation for delay").

Thus, intervention at this early stage is timely because the motion comes just one week after Intervenors became aware that their interests would not be adequately protected by the existing parties and intervention will neither delay the proceedings nor prejudice the other parties.

B. Significantly Protectable Interest

There is no doubt that Intervenors have significantly protectable interests related to the subject matter of this case. "The requirement of a significantly protectable interest is generally satisfied when 'the interest is protectable under some law, and that there is a relationship between the legally protected interest and the claims at issue.'" *Arakaki v. Cayetano*, 324 F.3d 1078, 1084 (9th Cir. 2003) (quoting *Sierra Club v. EPA*, 995 F.2d 1478, 1484 (9th Cir. 1993)). Although "[t]he 'interest' test is not a clear-cut or bright-line rule, because 'no specific legal or equitable interest need be established,'" *United States v. City of Los Angeles*, 288 F.3d 391, 398 (9th Cir. 2002) (quoting *Greene v. United States*, 996 F.2d 973, 976 (9th Cir. 1993)), Intervenors can nonetheless identify several specific interests they have in these proceedings.

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First, as registered voters in or near Legislative District 15, Intervenors Trevino and Campos have an interest in ensuring that any changes to the boundaries of those districts do not violate their rights to "the equal protection of the laws" under the Fourteenth Amendment to the Constitution of the United States, which, among other things, "forbids . . . intentionally assigning citizens to a district on the basis of race without sufficient justification." *Abbott v. Perez*, 138 S. Ct. 2305, 2314 (2018) (citing *Shaw v. Reno*, 509 U.S. 630, 641 (1993)). Plaintiffs assert a violation of Section 2 of the VRA, a statute that the Supreme Court has noted "pulls in the opposite direction" of the Equal Protection Clause which "restricts the consideration of race in the districting process." *Perez*, 138 S. Ct. at 2314. Intervenors Trevino and Campos have an interest in ensuring that Plaintiffs' VRA claim does not pull so hard it draws them into a district that abridges their right to equal protection under law.

Second, as a state legislator running for reelection in a district that borders Legislative District 15, Intervenor Representative Ybarra has a heightened interest in not only the orderly administration of elections, but also in knowing which voters will be included in his district. Any stay of elections in the region would disrupt this interest, as would any alteration to the boundaries of Legislative District 15 since such a change would almost certainly result in corresponding changes his own legislative districts.

Lastly, all three Intervenors—like the eight individual Plaintiffs—are registered voters in either Legislative District 15 or a neighboring district and intend to vote in future elections. (*See* Compl., Dkt. # 1 at 8-10.) Intervenors have just as strong of an interest as these Plaintiffs in ensuring that Legislative District 15 and its adjoining districts are drawn in a manner that complies with state and federal law. And as registered voters, Intervenors also have an interest in orderly, well-run elections that avoid chaos or delay.

These interests are clearly related to the present case. "The relationship requirement is met 'if the resolution of the plaintiff's claims actually will affect the applicant,'" *United States v. City of L.A.*, 288 F.3d 391 at 398 (quoting *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)). As noted above, the resolution of this case will affect Intervenors because Plaintiffs' VRA claim

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"pulls in the opposite direction" of their Fourteenth Amendment right to not be assigned "to a district on the basis of race without sufficient justification." *Perez*, 138 S. Ct. at 2314. The outcome of this case will also affect the boundaries of the legislative districts in which each of the Intervenors are registered and intend to vote and where Representative Ybarra is actively running for reelection. Clearly, Intervenors possess a significantly protectable interest in this case.

C. Practical Impairment

Intervenors also "must show that they are so situated that the disposition of the action without [them] may as a practical matter impair or impede their ability to safeguard their protectable interest." *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d at 862. And critically, "the relevant inquiry is whether [the absence of a party seeking intervention] 'may' impair rights 'as a practical matter' rather than whether [such absence] will 'necessarily' impair them." *United States v. City of L.A.*, 288 F.3d 391 at 401 (quoting Fed. R. Civ. P 24(a)(2)).

For reasons similar to those described above, this "practical impairment" element is satisfied here as well. Indeed, the existence of an intervenor's significantly protectable interest often goes hand-in-hand with the potential for impairment of that interest. *See, e.g.*, *California ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006) ("Having found that appellants have a significant protectable interest, we have little difficulty concluding that the disposition of this case may, as a practical matter, affect it." (citing *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001))).

Intervenors' ability to safeguard their Fourteenth Amendment interests may be impaired by their absence from this case. Representative Ybarra's ability to safeguard his interest in knowing who his voters will be and when the election will occur may be impaired by his absence. And the ability for all Intervenors to safeguard their interest in the orderly conduct of elections (which Plaintiffs seek to enjoin) and in the design of Central Washington legislative districts (which Plaintiffs seek to redraw) as current and future voters in those districts may be impaired by being excluded from this case. Thus, Intervenors' interests will be impaired if this litigation goes forward without them.

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D. Adequate Representation

None of the present parties can adequately protect Intervenors' interests in this case. The adequacy of a prospective intervenor's representation by existing parties is based on "(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *Arakaki*, 324 F.3d at 1086 (citing *California v. Tahoe Reg'l Planning Agency*, 702 F.2d 775, 778 (9th Cir. 1986)). This requirement "is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972) (quoting 3B James Moore, *Federal Practice* § 24.09-1[4] (2d ed. 1969)).

Certainly the Plaintiffs do not represent Intervenors' interest. As noted above, Plaintiffs' VRA claim "pulls in the opposite direction" of Intervenors' Fourteenth Amendment rights to not be assigned "to a district on the basis of race without sufficient justification." *Perez*, 138 S. Ct. at 2314. And Plaintiffs' requested relief of "enjoin[ing] Defendants from administering, enforcing, preparing for, or in any way permitting the nomination or election of members of the Washington State Legislature" would interfere with Representative Ybarra's interest in maintaining a consistent schedule of elections. (Compl., Dkt. #1 at 41.)

As for the Defendants, not only do none of the present Defendants have an interest such that they will "undoubtedly" make "all" of Intervenors' arguments, but the record already contains evidence that these Defendants are unwilling to make such arguments. Defendant Hobbs has "notifie[d] the Court that he intends to take no position on the issue of whether the state legislative redistricting plan violates section 2 of the Voting Rights Act." (Notice That Def. Hobbs Takes No Position, Dkt. # 40 at 2; *see also* Def. Hobbs' Resp. to Pls.' Mot. for Prelim. Inj., Dkt. # 50 at 7-8.) Defendants Billig and Jinkins have moved to be dismissed as defendants. (Mot. to Dismiss Defs. Jinkins and Billig, Dkt. # 37.) Of course, if such motion is granted, they would no longer be present to make any arguments in this case. But even if the Court denies their motion, they do not have

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the same interests as any of the Intervenors, so cannot be expected to make Intervenors' arguments. Nor do they appear willing to do so. For example, in their Response to Plaintiffs' Motion for Preliminary Injunction (Dkt. # 49), Defendants Billig and Jinkins admit that "neither [of them] is in a position to support or oppose the merits of Plaintiffs' vote dilution claim." (Dkt. # 49 at 9.) And while their Response briefs the Court on some of the "legal standards" applicable to VRA cases, it does not present any arguments as to why Plaintiffs' claim fails to meet those standards. (*See* Dkt. # 49 at 9-14.) In contrast, Intervenors wish to vigorously oppose Plaintiffs' VRA claim on the merits.

Intervenors would also offer additional "elements to the proceeding that other parties would neglect." *Arakaki*, 324 F.3d at 1086. As alluded to above, Intervenors can offer this Court a perspective regarding the tension between the VRA and the Equal Protection Clause. As a state representative who lists "Republican" as his party preference on the ballot and who is a member of the House Republican Caucus in the Legislature, Representative Ybarra can offer the Court a valuable perspective on the close interaction between race and partisanship, a perspective currently missing since all three present Defendants list the "Democratic" as their party preference on the ballot and are current or former members of Democratic caucuses in the Legislature. *See, e.g.*, *Perez*, 138 S.Ct. at 2314 ("[B]ecause a voter's race sometimes correlates closely with political party preference, it may be very difficult for a court to determine whether a districting decision was based on race or party preference." (internal citations omitted)); *Easley v. Cromartie*, 532 U.S. 234, 242 (2001) ("Caution is especially appropriate in this case, where the State has articulated a legitimate political explanation for its districting decision, and the voting population is one in which race and political affiliation are highly correlated.").

The present Defendants have also acknowledged the problematic posture of this case. Defendants Billig and Jinkins noted that "this case currently lacks a proper party to defend the redistricting plan on its merits" (Reply in Supp. of Mot. to Dismiss Defs. Jinkins and Billig, Dkt. # 47 at 6) and that "[t]he current structure of the case . . . will not lead to a full and fair adjudication on the merits" (Def. Jinkins and Billig's Resp. to Pls.' Mot. for Prelim. Inj., Dkt. # 49 at 2).

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Defendant Hobbs stated that "[p]articipation by other interested intervenors may also ensure that the Court can promptly and clearly resolve" this case (Notice That Def. Hobbs Takes No Position, Dkt. # 40 at 2) and that he "continues to believe this litigation must include additional proper parties, whether through intervention or involuntary joinder, to allow thorough consideration of the issues and complete relief" (Def. Hobbs' Resp. to Pls.' Mot. for Prelim. Inj., Dkt. # 50 at 8).[4]

For these reasons, Intervenors will not be adequately represented by any of the existing parties, and their intervention will ensure a more complete adversarial presentation of the issues.

* * *

Therefore, Intervenors are entitled to intervene as a matter of right pursuant to Fed. R. Civ. P. 24(a). They have moved to intervene in a timely fashion, they have multiple significantly protectable interests related to the subject of the action, those interests may be impaired by the disposition of this case, and their position will not be adequately represented by existing parties. The Court should thus grant their motion.

II. Permissive Intervention under Rule 24(b)

Even if the criteria for intervention of right were not satisfied, the Court should grant permissive intervention under Fed. R. Civ. P. 24(b), pursuant to which, "[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Courts may grant permissive intervention under Rule 24(b) "where the applicant for intervention shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common." *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 839 (9th Cir. 1996) (citing *Greene*, 996 F.2d at 978).

[4] As this motion was being drafted, but shortly before it was filed, Defendant Hobbs filed a Motion to Join Required Parties (Dkt. # 53), requesting that the Court "join the Redistricting Commission, members of the Redistricting Commission in their official capacities, and/or the State of Washington" pursuant to Fed. R. Civ. P. 19(a)(2). (Dkt. # 53 at 1.) Intervenors do not oppose this motion, but neither do they believe their right to intervene under Fed. R. Civ. P. 24(a) is diminished by joinder of any of those parties. Intervenors do not believe that (a) the interest of the State, the Commission, or the Commissioners is such that they will undoubtedly make all of Intervenors' arguments, (b) such additional parties are capable and willing to make such arguments, or (c) such additional parties would offer the same elements to the case that Intervenors can offer but that the present parties are neglecting.

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A. Independent Grounds for Jurisdiction

Federal courts generally require "independent jurisdictional grounds" to prevent permissive intervention from being used "to gain a federal forum for state-law claims" or "to destroy complete diversity in state-law actions." *Freedom From Religion Found. v. Geithner*, 644 F.3d 836, 843 (9th Cir. 2011). But "[w]here the proposed intervenor in a federal-question case brings no new claims, the jurisdictional concern drops away." *Id.* at 844 (citing 7C Charles Alan Wright et al., *Federal Practice Procedure* § 1917 (3d ed. 2010)). In their Answer to Complaint filed in conjunction with this motion, Intervenors assert several affirmative defenses and ask the Court for certain relief (convening a court of three judges pursuant to 28 U.S.C. § 2284(a), dismissing Plaintiffs' Complaint, awarding Intervenors' reasonable attorneys' fees, and granting other relief the Court deems just and proper) but are not raising new claims in any of their pleadings or motions filed today. Thus, the "independent jurisdictional grounds requirement" does not apply, because this is a "federal-question case" where the Intervenors "are not raising new claims." *Id*.

B. Timeliness

"In determining timeliness under Rule 24(b)(2), we consider precisely the same three factors—the stage of the proceedings, the prejudice to existing parties, and the length of and reason for the delay [as] considered in determining timeliness under Rule 24(a)(2)." *Wilson*, 131 F.3d at 1308 (citing *County of Orange v. Air California*, 799 F.2d 535, 539 (9th Cir. 1986)). Thus, a motion for permissive intervention is timely for the same reasons explained with respect to intervention as of right in Part A.1 above.

C. Common Questions of Law or Fact

Out of concerns for judicial economy, the claims and defenses of a Rule 24(b) intervenor must "have a question of law or a question of fact in common" with the main action. *Nw. Forest Res. Council*, 82 F.3d at 839. This element is plainly satisfied because, as set forth in their Answer to Complaint filed in conjunction with this motion, Intervenors seek to assert affirmative defenses that squarely address the factual and legal premise of Plaintiffs' claims, including but not limited to whether Plaintiffs' Complaint states a claim upon which relief can be granted, whether Plaintiffs

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have standing, whether this Court has subject matter jurisdiction over Plaintiffs' VRA claim, whether Defendants have any lawful remedy and whether any Defendants can even grant Plaintiffs the relief they request.

D. Undue Delay or Prejudice

Fed. R. Civ. P. 24(b)(3) cautions that "[i]n exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." As noted above, the Court has not yet ruled on the pending motions to dismiss (*see* Dkt. # 37) or for preliminary injunction (*see* Dkt. # 38), nor do Intervenors seek to change to the Court's current scheduling order (*see* Dkt. # 46) (which they have communicated to the other parties through respective counsel). Thus, there is no discernable prejudice or delay to any of the present parties that would result in granting intervention.

* * *

Therefore, even if Court determines Intervenors are not entitled to intervene as a matter of right, the Court should exercise its broad discretion to grant permissive intervention.

CONCLUSION

For the foregoing reasons, Intervenors respectfully requests that this Court enter an order granting their Motion to Intervene in this action.

DATED this 29th day of March, 2022.

Respectfully submitted,

s/ Andrew R. Stokesbary

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Counsel for Proposed Intervenor-Defendants

CERTIFICATE OF SERVICE

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

DATED this 29th day of March, 2022.

Respectfully submitted,

s/ Andrew R. Stokesbary
Andrew R. Stokesbary, WSBA #46097

Counsel for Proposed Intervenor-Defendants

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The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT TACOMA

SUSAN SOTO PALMER et al.,

Plaintiffs,

v.

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

Defendants,

and

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

Intervenor-Defendants.

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

[PROPOSED] INTERVENOR-DEFENDANTS' ANSWER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

REQUEST FOR THREE JUDGE COURT

Intervenor-Defendants Jose Trevino, Ismael G. Campos and State Representative Alex Ybarra ("Intervenors") hereby answer Plaintiffs' Complaint for Declaratory and Injunctive Relief as follows. To the extent an allegation is directed to Defendants Steven Hobbs, Laurie Jinkins or Andy Billig, Intervenors are without sufficient information to form a belief as to the truth of the allegation and therefore deny. To the extent that the Complaint's headings or subheadings contain factual allegations, they are denied. Intervenors reserve the right to amend this pleading as permitted by this Courts rules and orders, including Fed. R. Civ. P. 15.

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INTRODUCTION

1. This paragraph states a legal conclusion to which no response is required. To the extent a further response is required, denied.

2. Intervenors admit that Legislative District 15[1] includes parts of the Yakima Valley and Pasco. The remainder of this paragraph states a legal conclusion to which no response is required. To the extent a further response is required, denied.

3. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

4. Admitted.

5. Intervenors admit that the cities of Toppenish, Wapato and Mabton, portions of the city of Yakima, and Benton, Grant and Franklin Counties are located within Legislative District 15. The remainder of this paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

6. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

7. Intervenors admit that the City of Othello is located in Adams County and in Legislative District 15. Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

8. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

9. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without

[1] Unless specifically indicated otherwise, all references to "Legislative District 15" contained in this Answer refer to the "new" boundaries of Legislative District 15 as established by the Commission's legislative redistricting plan submitted in December 2021 and amended by the Washington State Legislature during its 2022 regular session. *See* H. Con. Res. 4407, 67th Leg., 2022 Reg. Sess. (Wash. 2022) (adopted).

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information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

10. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

11. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

12. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

13. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

14. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

15. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

16. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without

information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

17. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

18. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

19. Intervenors deny that even-number legislative district elections are held only in presidential election years and odd-numbered legislative district elections are held only in non-presidential years. (Elections for state representative positions are held every two years, in both presidential and non-presidential election years. Elections for state senator positions are held every four years, with elections in 13 odd-numbered districts and 12 even-numbered districts occurring in presidential election years, and elections in 12 odd-numbered districts and 12 even-numbered districts occurring in non-presidential election years.) The remainder of this paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

20. Intervenors admit that 15 is an odd-number and that elections for state senator in Legislative District 15 are currently held in non-presidential years. Intervenors deny that "[b]y assigning the district an odd number, the Commission has ensured even lower Latino voter turnout in the district." As noted in the paragraph above, elections for state representative positions, including those for Legislative District 15, are held every two years, meaning both presidential and non-presidential election years. Elections for state senator positions are held during presidential election years in 13 odd-numbered districts and 12 even-numbered districts, and

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during non-presidential election years in 12 odd-numbered districts and 12 even-numbered districts.

21. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

22. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the brief quotation from *LULAC v. Perry*, 548 U.S. 399 (2006). To the extent a further response is required, denied.

23. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

24. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

25. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

26. Intervenors admit that Legislative District 15 as currently constituted encompasses the eastern portion of Yakima County. Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph.

27. Intervenors admit that, in the November 2018 general election, incumbent United States Senator Maria Cantwell, running for reelection to her fourth term, received 43.27 percent of the total votes (not including write-ins) within current Legislative District 15, and that challenger Bengie Aguilar received 39.41 percent of the total votes (not including write-ins) for the position of Legislative District 15 State Senator, running against a five-term incumbent (who was also elected to two terms in the State House of Representatives from Legislative District 15

prior to his election to the State Senate). Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

28. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

29. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

30. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

31. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

32. Intervenors admit only that presidential preference primaries conducted pursuant to Wash. Rev. Code ch. 29A.56 require political affiliation. Intervenors deny that any other races or offices require political affiliation. *See* Wash. Rev. Code § 29A.52.112.(4) ("A candidate may choose to express no party preference."). Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

33. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

34. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

JURISDICTION AND VENUE

35. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

36. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only that 42 U.S.C. § 1988 and 52 U.S.C. § 10310(e) authorize certain courts to award certain fees to certain prevailing parties bringing certain claims under certain statutes in certain situations.

37. Admitted.

38. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only that venue is proper in this judicial district.

PARTIES

39. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

40. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

41. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

42. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

43. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

44. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

45. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

46. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

47. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

48. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

49. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

50. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

51. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

52. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

53. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

54. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

55. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

56. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

57. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

58. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

59. Intervenors admit only that the language in quotations in the second sentence of this paragraph accurately quotes a portion of Wash. Rev. Code § 29A.04.230. Intervenors further admit that Wash. Rev. Code § 29A.04.255 provides that the Secretary of State will accept and file certain documents, including some declarations of candidacy. Intervenors admit that the Complaint purports to assert a claim against Defendant Hobbs in his official capacity as the Secretary of State of Washington. Otherwise, this paragraph asserts legal conclusions and contains legal arguments, to which no response is required. To the extent a further response is required, denied.

60. Intervenors admit that Defendant Jinkins is Speaker of the Washington State House of Representatives and is being sued in her official capacity. Intervenors deny that Defendant Jinkins has any special or unique power to call for a vote to reconvene the Commission. To the extent a further response is required, denied.

61. Intervenors admit that Defendant Billig is the Washington State Senate Majority Leader and is being sued in his official capacity. Intervenors deny that Defendant Billig has any special or unique power to call for a vote to reconvene the Commission. To the extent a further response is required, denied.

LEGAL BACKGROUND

62. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotations from Section 2 of the Voting Rights Act. To the extent a further response is required, denied.

63. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotation from *Thornburg v. Gingles*, 478 U.S. 30 (1986). To the extent a further response is required, denied.

64. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotation from *Thornburg v. Gingles*. To the extent a further response is required, denied.

65. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotation from *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016). To the extent a further response is required, denied.

66. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only that this

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paragraph cites to Section 2(b) of the Voting Rights Act. To the extent a further response is required, denied.

67. Intervenors admit that the majority report of the Senate Committee on the Judiciary accompanying the 1982 bill which amended Section 2 of the Voting Rights Act, S. Rep. No. 97-417, at 28-29 (1982), listed seven "typical factors" courts may consider in deciding whether Section 2 has been violated. Intervenors further admit that this paragraph substantially copies a summary of these factors that the United States Department of Justice maintains on its website. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

68. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only that this paragraph cites to two district court opinions. To the extent a further response is required, denied.

69. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotations from *United States v. Marengo County Commission*, 731 F.2d 1546 (11th Cir. 1984). To the extent a further response is required, denied.

70. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

71. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotations from *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977) and *North Carolina State Conference of NAACP v. McCrory*. To the extent a further response is required, denied.

72. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the

accuracy of the quotation from *North Carolina State Conference of NAACP v. McCrory*. To the extent a further response is required, denied.

73. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotation from *Hunter v. Underwood*, 471 U.S. 222 (1985). To the extent a further response is required, denied.

74. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only that this paragraph cites an opinion by a district court in the Fifth Circuit and another opinion from the Sixth Circuit. To the extent a further response is required, denied.

75. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotation from *LULAC v. Perry*. To the extent a further response is required, denied.

76. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only that this paragraph cites an opinion by a district court in the Fifth Circuit. To the extent a further response is required, denied.

77. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the brief quotations from *LULAC v. Perry* and *Perez v. Abbott*, 250 F. Supp. 3d 123 (W.D. Tex. 2017). To the extent a further response is required, denied.

FACTUAL ALLEGATIONS

78. Admitted.

79. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

80. Admitted.

81. Admitted.

82. Admitted.

83. Admitted.

84. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

85. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

86. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

87. Intervenors admit that much of Yakima County, including the cities of Yakima, Toppenish, Sunnyside and Grandview, is part of the "Yakima Valley," but deny that this paragraph contains an accurate or complete list of the cities and counties within the "Yakima Valley" as typically conceived by residents of the region, and further deny that Benton or Franklin Counties or any of the Tri-Cities are part of the "Yakima Valley."

88. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

89. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

90. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

91. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

92. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

93. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

94. Admitted.

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95. Admitted.

96. Admitted.

97. Intervenors admit that, according to the 2020 Census, the total combined population of individuals who identify as Hispanic or Latino in Benton, Franklin and Yakima Counties is 231,833. Intervenors deny that Benton and Franklin Counties, or even the entirety of Yakima County, are part of the "Yakima Valley." Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

98. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

99. Admitted.

100. Admitted.

101. Admitted.

102. Admitted.

103. Admitted.

104. Admitted.

105. Intervenors admit that upon approval of a redistricting plan by three of the voting members of the Commission, the Commission must submit the plan to the Legislature, but deny that Wash. Rev. Code § 44.05.110 is the authority for this proposition.

106. Intervenors admit that after submission of the plan by the Commission, the Legislature has the next thirty days during any regular or special session to amend the Commission's plan by an affirmative vote in each house of two-thirds of the members elected or appointed thereto, but deny that Wash Rev. Code § 44.05.110 is the authority for this proposition.

107. Intervenors admit that if the Legislature amends the Commission's plan, the legislative amendment may not include more than two percent of the population of any legislative or congressional district, but deny that Wash. Rev. Code § 44.05.110 is the authority for this proposition.

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108. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotation from subsection (1) of Wash. Rev. Code § 44.05.120. To the extent a further response is required, denied.

109. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only that redistricting plans must comply with the United States Constitution and deny the allegations in the remainder of this paragraph.

110. Admitted.

111. Admitted.

112. Admitted.

113. Admitted.

114. Admitted.

115. Admitted.

116. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

117. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

118. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

119. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

120. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

121. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

122. Intervenors admit that Commissioner Sims' original proposed map placed the City of Pasco into Legislative District 16, but are otherwise without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph.

123. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

124. Intervenors admit that Commissioner Walkinshaw's original proposed map placed the City of Pasco into Legislative District 16, but are otherwise without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph.

125. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

126. Intervenors admit only that on or about October 19, 2021, the Washington State Senate Democratic Caucus circulated a presentation by Dr. Matt Barreto, a professor of political science and Chicana/o studies at UCLA and co-founder of the UCLA Voting Right Project and that a copy of the presentation slide deck is available at https://senatedemocrats.wa.gov/wp-content/uploads/2021/10/Barreto-WA-Redistricting-Public-Version.pdf. Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

127. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

128. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

129. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

130. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

131. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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132. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

133. Intervenors admit only that several news outlets in Washington published articles regarding Dr. Bareto's presentation. Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

134. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

135. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

136. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

137. Intervenors admit only that slides 22 and 23 of the referenced slide deck each contain the phrase "VRA Compliant Option" in large font, depict a noncompact shaded area superimposed on a map of South-Central Washington, and present several numbers in a table. Otherwise, this paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

138. Intervenors admit only that slide 22 of the referenced slide deck contains the phrase "VRA Compliant Option-1: Yakima-Columbia River Valley" in large font, depicts a noncompact shaded area superimposed on a map of South-Central Washington, and presents several numbers in a table. Otherwise, this paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

139. Intervenors admit only that slide 23 of the referenced slide deck contains the phrase "VRA Compliant Option-2: Yakama Reservation" in large font, depicts a noncompact shaded area

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superimposed on a map of South-Central Washington, and presents a several numbers in a table. Otherwise, this paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

140. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

141. Admitted.

142. Intervenors admit that a page on the Commission's website, available at https://www.redistricting.wa.gov/commissioner-proposed-maps, contains a subheading titled "Revised Map October 25, 2021" below the names of both Commissioner Sims and Commissioner Walkinshaw, and that below each of these subheading are links to legislative district maps in various formats. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

143. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

144. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

145. Denied. *See* Order Regarding the Washington State Redistricting Commission's Letter to the Supreme Court on November 16, 2021 and the Commission Chair's November 21, 2021 Declaration ("Redistricting Order"), No. 25700-B-676, at 2 (Wash. Dec. 3, 2021) ("This dispute was resolved before midnight on November 15, 2021. That night, at 11:59:28 p.m., the Commission voted unanimously to approve a congressional redistricting plan, and, at 11:59:47 p.m., voted unanimously to approve a legislative redistricting plan. Taken together, the chair's sworn declaration and the minutes of the Commission's November 15, 2021 meeting establish that the Commission approved both redistricting plans by the constitutional deadline established in article II, section 43 of the Washington State Constitution.").

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146. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

147. Intervenors admit only that the Commission did not approve "a *letter* transmitting the plan" to the Legislature until shortly after midnight on November 16, 2021. Redistricting Order at 2 (emphasis added); *cf. supra* ¶ 145 (explaining that the redistricting plan itself was approved on November 15). To the extent a further response is required, denied.

148. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

149. Intervenors admit that the Washington Supreme Court "decline[d] to exercise its authority under article II, subsection 43(6) and chapter 44.05 Wash. Rev. Code to adopt a redistricting plan because it concludes that the plan adopted by the Washington State Redistricting Commission met the constitutional deadline and substantially complied with the statutory deadline to transmit the matter to the legislature." Redistricting Order at 4.

150. Admitted.

151. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

152. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

153. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

154. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

155. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

156. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

157. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

158. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

159. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

160. Intervenors admit only that in the November 2012 general election for State Representative, Position 2 in Legislative District 15, then-Representative David Taylor defeated a challenger named Pablo Gonzalez. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

161. Intervenors admit only that in the November 2014 general election for State Senator in Legislative District 15, Senator Jim Honeyford defeated a challenger named Gabriel Muñoz. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

162. Intervenors admit only that in the November 2014 general election for State Representative, Position 2 in Legislative District 15, then-Representative David Taylor defeated a challenger named Teodora Martinez-Chavez. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

163. Intervenors admit only that in the November 2018 general election for State Senator in Legislative District 15, Senator Jim Honeyford defeated a challenger named Bengie Aguilar. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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164. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

165. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

166. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

167. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

168. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

169. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

170. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

171. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

172. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

173. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

174. Intervenors admit that, under Washington law, state legislative offices are "[p]artisan office[s] . . . for which a candidate may indicate a political party preference on his or her declaration of candidacy and have that preference appear on the primary and general election ballot in conjunction with his or her name." Wash. Rev. Code § 29A.04.110. Intervenors further admit that the "Republican" and "Democratic" parties are frequently listed by candidates for state legislative office as their party preference. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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175. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

176. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

177. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

178. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

179. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

180. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

181. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

182. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

183. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without

information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

184. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

185. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

186. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

187. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotation from *Luna v. County of Kern*, 291 F. Supp. 3d 1088 (E.D. Cal. 2018). Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

188. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

189. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

190. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

191. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

192. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

193. Admitted.

194. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

195. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

196. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

197. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

198. Intervenors admit that the cities of Wapato, Toppenish and Mabton are not located within Legislative District 15. Intervenors deny that Legislative District 15 excludes the City of Yakima. The remainder of this paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

199. Intervenors admit only that the cities of Wapato, Toppenish and Mabton are not located within Legislative District 15, but are otherwise without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

200. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

201. Intervenors admit that the City of Othello is located in Adams County and in Legislative District 15. Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

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202. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

203. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

204. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

205. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

206. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

207. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

208. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph.

209. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

210. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

211. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

212. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

213. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

214. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors are without

information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

215. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

216. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, Intervenors admit only the accuracy of the quotation from *Luna v. County of Kern*. To the extent a further response is required, denied.

217. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

218. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

219. Intervenors admit only the accuracy of the quotation from the article cited in this paragraph. To the extent a further response is required, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

220. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

221. Intervenors admit that, according to contemporaneous news coverage, Mr. Zambrano-Montes was shot and killed by police, but are otherwise without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

222. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

223. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

224. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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225. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

226. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

227. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

228. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

229. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

230. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

231. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

232. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

233. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

234. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

235. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

236. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

237. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

238. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

239. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

240. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

241. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

242. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

243. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

244. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

245. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

246. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

247. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

248. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

249. Intervenors admit that Melissa Reyes, an individual, League of United Latin American Citizens, a Texas nonprofit corporation, and Latino Community Fund of Washington State, a Washington nonprofit corporation, are plaintiffs in the case *Reyes v. Chilton*, No. 4:21-cv-05075 (E.D. Wash. filed May 7, 2021). Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

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250. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

251. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

252. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

253. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

254. Intervenors admit that Jose Trevino is the Mayor of the City of Granger, but are otherwise without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

255. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

256. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

257. Admitted.

258. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

259. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

260. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

261. Intervenors admit that Pablo Gonzalez, Teodora Martinez-Chavez and Bengie Aguilar have been unsuccessful candidates for state legislative offices in Legislative District 15 during the past decade. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

262. Intervenors admit that Representatives Bruce Chandler and Jeremie Dufault currently serve as State Representatives from Legislative District 15 and that Senator Jim Honeyford currently serves as State Senator from Legislative District 15. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in the remainder of this paragraph, and therefore deny.

263. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

264. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

265. Intervenors admit only that in the November 2016 general election for State Representative, Position 1 in Legislative District 14, then-Representative Norm Johnson defeated a challenger named Susan Soto Palmer. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

266. Intervenors admit that Representatives Gina Mosbrucker and Chris Corry currently serve as State Representatives from Legislative District 14 and that Senator Curtis King currently serves as State Senator from Legislative District 14. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

267. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

268. Intervenors admit that former Commissioner Jesse Palacios was elected to the Yakima County Board of Commissioners in 2002. Otherwise, Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

269. Intervenors are without information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny.

270. Denied. Intervenor Trevino, who is Hispanic and resides in the Yakima Valley in Legislative Districts 15, believes that his state legislators and other elected officials in the region

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are responsive to his needs and those of other Hispanic/Latino residents. Intervenor Campos, who is Hispanic and resides in Kennewick in Legislative District 8, denies that the Tri-Cities are part of the Yakima Valley but also believes that his state legislators and other elected officials in the Tri-Cities are responsive to his needs and those of other Hispanic/Latino residents there. Intervenor Representative Ybarra, who is Hispanic and represents Legislative District 13 in the State House of Representatives, believes he is responsive to the needs of his Hispanic/Latino constituents.

271. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

272. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

CLAIMS FOR RELIEF

273. Intervenors repeat and incorporate by reference their responses to all allegations in the Complaint.

274. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

275. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

276. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

277. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

278. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

279. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

280. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

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281. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

282. Intervenors repeat and incorporate by reference their responses to all allegations in the Complaint.

283. This paragraph states a legal conclusion and contains legal arguments to which no response is required. To the extent a further response is required, denied.

PRAYER FOR RELIEF

Intervenors deny that Plaintiffs are entitled to any relief.

GENERAL DENIAL

Intervenors deny each and every allegation in Plaintiffs' Complaint that is not expressly admitted above.

INTERVENORS' AFFIRMATIVE DEFENSES

Intervenors' affirmative defenses to the Complaint are set forth below. By setting forth the following defenses, Intervenors do not assume the burden of proof on the matter and issue other than those in which they have the burden of proof as a matter of law. Intervenors reserve the right to supplement these defenses.

1. Plaintiffs have failed to file "a short and plain statement of the claim showing that that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

2. Plaintiffs' Complaint includes multiple conclusory allegations without supporting factual allegations showing an entitlement to relief.

3. Plaintiffs fail to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6).

4. This Court lacks subject-matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1).

5. Plaintiffs lack standing to bring their claims and request relief.

6. "[Section] 2 of the Voting Rights Act of 1965 does not apply to redistricting." *Abbott v. Perez*, 138 S. Ct. 2305, 2335 (2018) (Thomas, J. concurring).

7. Plaintiffs have no lawful remedy.

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8. Plaintiffs are unable to establish the elements required for injunctive relief.

9. Plaintiffs seek inappropriate relief, including relief that is not within Intervenors or any of the present Defendants' authority to accomplish.

INTERVENOR-DEFENDANTS' PRAYER FOR RELIEF

Intervenors respectfully ask the Court for the following relief:

1. Convene a court of three judges pursuant to 28 U.S.C. § 2284(a);

2. Dismiss the Plaintiffs' Complaint in its entirety and with prejudice;

3. Award Intervenors' reasonable attorneys' fees and costs incurred in this action in accordance with 42 U.S.C. § 1988, 52 U.S.C. § 10310(e) and any other applicable law or rule; and

4. Grant such other and further relief as the Court deems just and proper.

DATED this 29th day of March, 2022.

Respectfully submitted,

s/ Andrew R. Stokesbary
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Sumner, WA 98390
T: (206) 486-0795
dstokesbary@stokesbarypllc.com

Counsel for Intervenor-Defendants

CERTIFICATE OF SERVICE

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

DATED this 29th day of March, 2022.

Respectfully submitted,

s/ Andrew R. Stokesbary
Andrew R. Stokesbary, WSBA #46097

Counsel for Intervenor-Defendants

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The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT TACOMA

SUSAN SOTO PALMER et al.,

Plaintiffs,

v.

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

Defendants,

and

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

Intervenor-Defendants.

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

[PROPOSED] ORDER GRANTING INTERVENOR-DEFENDANTS' MOTION TO INTERVENE

THIS MATTER, having come before the Court upon Intervenor-Defendants' Motion to Intervene, having read and considered all briefs and other matters presented to the Court, and upon any hearing in this matter, the Court finds that the Intervenor-Defendants are entitled to intervene in this action pursuant to Fed. R. Civ. P. 24 and, therefore, IT IS HEREBY ORDERED that:

Intervenor-Defendants' Motion to Intervene is GRANTED. Jose Trevino, Ismael G. Campos and Alex Ybarra shall each be made an Intervenor-Defendant in this action.

The Answer attached to the Motion to Intervene shall stand as the Answer in this action.

IT IS SO ORDERED.

DATED this _____ day of _____, 2022.

_____
The Honorable Robert S. Lasnik
United States District Judge

Presented by:

s/ Andrew R. Stokesbary
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Counsel for Intervenor-Defendants

CERTIFICATE OF SERVICE

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

DATED this 29th day of March, 2022.

Respectfully submitted,

s/ Andrew R. Stokesbary
Andrew R. Stokesbary, WSBA #46097

Counsel for Intervenor-Defendants

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SUSAN SOTO PALMER, et. al.,

Plaintiffs,

v.

STEVEN HOBBS, et. al.,

Defendants,

and

JOSE TREVINO, ISMAEL CAMPOS, and ALEX YBARRA,

Intervenor-Defendants.

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

Judge: Robert S. Lasnik

PLAINTIFFS' OPPOSITION TO DEFENDANT STATE OF WASHINGTON'S MOTION TO MODIFY SCHEDULING ORDER AND EXTEND TRIAL DATE

INTRODUCTION

This Court should deny Defendant State of Washington's motion to modify the Court's scheduling order and extend the trial date. The State's proposed extension of four to six months will drastically impact voters in the Yakima Valley Region. Such an extension will prejudice Plaintiffs, delay any remedial changes to the legislative map, and stall implementation of a remedial district likely beyond the 2024 election cycle.

With the trial date still over a half a year away, the State has time to complete discovery, retain an expert, and prepare for trial despite an assertion that not enough time exists. Plaintiffs have been more than willing to work with the State to adjust case management deadlines. To ensure a fair shot at relief before the 2024 election, however, Plaintiffs oppose moving the trial date set by the Court. Indeed, this Court has stated that the scheduling order should not be modified for the entry of new parties into this suit. *See* Dkt. # 46. Thus, Plaintiffs oppose any modification to the scheduling order that would delay trial. If this Court grants a continuance, Plaintiffs request that it not be for more than one month.

BACKGROUND

On January 19, 2022, Plaintiffs filed their complaint challenging the legislative redistricting plan drawn by the Washington Redistricting Commission and approved by the Legislature. *See* Compl. Plaintiffs allege that Legislative District 15 was drawn to create the façade of a Latino opportunity district that in fact dilutes Latino voting power in violation of Section 2 of the federal Voting Rights Act ("VRA"). *Id.* ¶¶ 34, 273-83. To remedy this violation, Plaintiffs seek declaratory and injunctive relief, including a declaration that the state's legislative redistricting plan violates Section 2. *Id.*, Prayer for Relief, ¶¶ (a)-(b).

Plaintiffs sued Secretary of State Steven Hobbs, who implements the state's redistricting plans, and legislative leaders Laurie Jinkins and Andrew Billing, in their respective official capacities as Speaker of the House and Senate Majority Leader. The legislative leaders were dismissed from the suit on April 13. Dkt. # 66. On February 25, 2022, Plaintiffs filed their Motion for Preliminary Injunction, Dkt. # 38, and the Court heard oral arguments on April 12, 2022.

On March 24, 2022, Defendant Hobbs filed a Motion for Joinder asking this Court to add the State of Washington and the Redistricting Commission as parties. Dkt. # 53. In seeking joinder, Defendant Hobbs argued that the State of Washington is a proper party because the VRA validly abrogated state sovereign immunity, *id.* at 5, and further stated that the Secretary was "not seeking

changes to the dates established in the Court's Minute Order Setting Trial Dates and Related Dates (Dkt. # 46)," *id.* at 7.

On May 6, 2022, this Court ordered joinder of the State of Washington. Dkt. # 68. The Court affirmed that Secretary Hobbs was a proper party, *id.* at 2, and also found the State of Washington to be a proper party due to "this unique procedural junction in the redistricting process," *id.* at 5. The Court ordered Plaintiffs to add the State of Washington as a defendant and made no changes to the scheduling order. *Id.* Shortly thereafter, the Court permitted intervention of Jose Treviño, et al. ("Defendant-Intervenors") explicitly stating that "[t]he case management deadlines established at Dkt. # 46 remain unchanged." Dkt. # 69 at 10.

Although the State has been a party in this case since May 13, the State only contacted Plaintiffs regarding case schedule modifications on June 17. *See* Dkt. # 80-1. Although Plaintiffs noted they did not believe a four to six-month continuance necessary, they indicated that they were open to discussing changes to the expert discovery deadlines within the framework of the existing case management schedule. Plaintiffs proposed the following new expert deadlines: keeping the Plaintiffs' expert reports due July 13, 2022, Defendant's expert report due August 3, 2022, and an expert-specific discovery deadline for September 20, 2022. *Id.* The State did not consider Plaintiffs' proposal and instead filed a motion with this court. *Id.*

LEGAL STANDARD

Case management deadlines for pre-trial and trial procedures established by the court "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). In deciding whether to grant a motion to continue, courts in the Ninth Circuit consider the factors set out in *United States v. Flynt*: "(1) the 'diligence' of the party seeking the continuance; (2) whether granting the continuance would serve any useful purpose; (3) the extent to which granting the continuance would have inconvenienced the court and the opposing party; and (4) the potential prejudice." *State Farm Fire & Cas. Co. v. Willison*, 833 F. Supp. 2d 1200, 1211 (D. Haw. 2011)

(citing *United States v. Flynt,* 756 F.2d 1352, 1358-59 (9th Cir. 1985)). Local Civil Rule 16(b)(6) further provides that "[m]ere failure to complete discovery within the time allowed does not constitute good cause for an extension or continuance." W.D. Wash. Civ. R. 16.

ARGUMENT

I. Plaintiffs Would be Severely Prejudiced by a Continuance.

The third *Flynt* factor, the extent of inconvenience to the court and the non-moving party, counsels strongly against a continuance. Delaying trial by four to six months would not only inconvenience Plaintiffs and possibly the Court, but severely prejudice Plaintiffs' ability to secure a remedy before the 2024 election should they prevail.

As this Court is aware, the *Purcell* principle instructs district courts to avoid ordering changes to election laws, including redistricting plans, "in the period close to an election." *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring) (citing *Purcell v. Gonzales*, 549 U.S. 1 (2006)). "How close to an election is too close may depend in part on the nature of the election law at issue, and how easily the State could make the change without undue collateral effects. Changes that require complex or disruptive implementation must be ordered earlier than changes that are easy to implement." *Id.* at 881 n.1. Courts must also consider the risk of voter confusion and the potential for judicial procedures like appellate or *en banc* review to cause further delay. *Purcell,* 549 U.S. at 4-5. *Purcell* considerations guided this Court's decision not to order preliminary relief four months before the 2022 primary election, Dkt. # 66 at 5-10, and will pose a barrier to relief as the 2024 election draws near. Perhaps for this reason, the Court scheduled trial in January 2023, likely allowing enough time to develop a remedial map and implement a new plan before the 2024 election. Dkt. # 46.

Delaying the trial date would prejudice Plaintiffs' ability to secure relief for the 2024 election because it would leave too little time for post-trial proceedings to conclude before the *Purcell* considerations come back into play. The Court will first need time to consider the evidence

and rule on the merits. Then, if Plaintiffs win, the remedial process will begin. In VRA Section 2 lawsuits, this process can take several months, involving expert reports, opportunities for map proposals, and multiple rounds of hearings and briefing about such proposals and expert reports. As this Court has indicated, if it "finds that the existing plan violates Section 2, the political apparatus of the state gets 'the first cut at drawing a new map.'" Dkt. # 68 at 3 (quoting *Singleton v. Merrill,* No. 2:21-cv-1291-AMM, 2022 WL 265001, *19 (N.D. Al. Jan. 24, 2022)). Courts give states between several weeks to several *months* to ascertain and convene their map-drawing apparatus and propose a new statewide remedial plan. *See, e.g.*, *Covington v. State*, 267 F. Supp. 3d 664, 668 (M.D.N.C. 2017) (finding a deadline of five weeks for the North Carolina legislature to enact remedial district warranted); *Vera v. Richards*, 861 F. Supp. 1304, 1351 (S.D. Tex. 1994), *aff'd sub nom. Bush v. Vera*, 517 U.S. 952 (1996) (ordering the Texas legislature to develop remedial plans within seven months before remedial hearings would be held on the "status" of the redistricting efforts); *Personhuballah v. Alcorn*, 155 F. Supp. 3d 552, 557 (E.D. Va. 2016) (ordering a court-drawn map after the Virginia General Assembly failed to act within its three-months deadline). If the State proposes a plan, Plaintiffs would get an opportunity to provide briefing with any objections or feedback about the proposed remedial plan, as well as possible expert analysis or alternative proposals, adding at least a few weeks or a month, and the Court would need time to consider the briefing and expert materials and reach a decision. Should the State fail to propose an appropriate remedy, the Court may also order a remedial plan drawn by a special master, which would also take additional time. *See Favors v. Cuomo*, 11-CV-5632 RR GEL, 2012 WL 928223, at *2, n.8 (E.D.N.Y. Mar. 19, 2012) (suggesting at least two months are needed for court-drawn statewide redistricting plans).

The time needed for the remedial process described above is separate from any appellate review a party may seek, which would further prolong implementation of a new legislative district map. Any appeals by Defendants could concern the merits and/or the remedy, and in either

circumstance, this Court may need to schedule further proceedings on remand. All things considered, a four- to six-month continuance would push the process of determining a final remedial plan well into late 2023 and almost certainly into 2024.

Furthermore, once a final plan is determined and approved, implementing the plan will, as this Court has found, "take[] time and expertise." Dkt. # 66 at 6. County election officials and the Secretary of State will have to draw and approve new precinct boundaries. *Id.* at 6-7. According to the Secretary of State and his declarants at the preliminary injunction stage, establishing new precincts is at minimum a five-week process for one county. *Id.* at 8; *see also* Dkt. # 50 at 3-7. The State will also need time to educate election officials, voters, and candidates about the new district boundaries and changes to affected districts. The current trial date provides the Court with time to hold trial, decide the issue on the merits, and if necessary, complete the remedial process with time for appellate review and sufficient time to implement a new map before the 2024 election cycle. The State's proposed four- to six-month delay—which is anything but "modest"—would severely prejudice Plaintiffs by jeopardizing their access to timely relief.

Finally, in addition to prejudicing Plaintiffs, the State's proposed continuance would interfere with binding commitments in May, June, and July of 2023. Several of Plaintiffs' counsel have scheduled trials during this period that would directly conflict with the proposed continuance. As such, the third *Flynt* factor does not support a continuance.

II. The State Has Not Been Diligent in Preparing for Its Defense.

The first *Flynt* factor, the moving party's diligence, also fails to justify a continuance. The State's chief concern with the current schedule is the upcoming expert disclosure and discovery deadlines. But the State has failed to meaningfully explain the steps it has taken to meet these deadlines, beyond generalized assertions of having "done factual and legal research," "reached out to Plaintiffs' counsel," and "research[ed] potential experts." *See* Dkt. # 80-1 (Decl. of Andrew Hughes) at ¶¶ 3-6.

With respect to the expert report deadline, the State was aware of its obligations under the current case schedule for at least seven weeks before it filed this Motion—i.e., at least since the Court ordered the State's joinder on May 13. Yet, at the time of filing the Motion, the State had only "recently" been in contact with potential experts. *Id.* at ¶ 6. The State also noticed this Motion for July 8, a mere five days before expert reports are due. Waiting to begin contacting potential experts and then requesting a continuance a mere three weeks before the expert report deadline does not equate to diligence.

Further, although the State attempts to cast Plaintiffs as the party unwilling to negotiate, *see* Mot. at 6, that narrative is pure fiction. When Defendants asked to delay trial by four to six months, Plaintiffs expressed an openness to discuss and accommodate the case deadlines of greatest concern and offered a counter-proposal as a starting point. Dkt. 80-1 at 3. The State declined to confer further and "filed this motion as quickly as it could." Mot. at 6. At the very least, to avoid prejudice to Plaintiffs, the existing case management deadlines could be extended or moved to accommodate any of the State's issues or lack of diligence, while keeping the trial date the same.

III. The State Has Not Demonstrated That a Continuance Will Serve a Useful Purpose or That It Will Be Prejudiced Without One.

The State has also failed to demonstrate the second and fourth *Flynt* factors, that a continuance will serve a useful purpose and that the State will suffer prejudice without one. The State offers two reasons for its requested continuance: first, its relatively late entry into the case, and second, its alleged inability to conduct expert and fact discovery within the framework of the current case schedule.

First, the State's suggestion that its later entry in the case is enough to show good cause for a continuance is mistaken. Mot. at 4-6. The Attorney General's office, which serves as counsel for the State, had notice of this lawsuit since the Complaint was filed on January 19, 2022, and attorneys from the same office representing the State's constitutional officers have been litigating

this case since that time. The State's lack of preparedness and diligence stemming from its late entry has nothing to do with Plaintiffs' choice of defendants. As is typical in cases challenging the validity of state laws in federal court, Plaintiffs "sue[d] the individual state officials most responsible for enforcing [the legislative redistricting plan] and [sought] injunctive or declaratory relief against them." *See Berger v. N. Carolina State Conf. of the NAACP*, No. 21-248, 2022 WL 2251306, at *3 (U.S. June 23, 2022). If the State had any interest in joining the litigation before Secretary Hobbs moved for its joinder, then it could have acted on those interests by intervening in the suit. *See id.* at *3-4 (confirming the right of duly authorized state agents to intervene to defend state law).

Despite the State's later entry into this suit, it is (and has always been) entirely possible for the State to defend this case within the framework of the case management schedule set by the Court, especially if the expert deadlines are shifted as Plaintiffs have proposed. The State has long had in its possession public reports by Dr. Barreto analyzing the existence of racially polarized voting in the Yakima Valley region, as well as any analysis provided to the 2021 Redistricting Commission regarding racially polarized voting and VRA compliance. The declarations of Dr. Matt Barreto and Dr. Loren Collingwood filed in this case have also been part of the public record since Plaintiffs moved for a preliminary injunction in February. *See* Dkt. # 38-25 (First Collingwood Decl.), 38-26 (Barreto Decl.), 54-2 (Second Collingwood Decl.).[1]

Second, the mere allegation that the State may fail to complete discovery in the time allowed does not constitute good cause for an extension or continuance under the local rules of the Western District of Washington. *See* W.D. Wash. Civ. R. 16. Any minimal prejudice the State may face in marshalling its resources to conduct fact and expert discovery can be addressed by modifying the pre-trial discovery deadlines within the current trial setting. For example, Plaintiffs offered the State the following proposal, which would extend the expert discovery deadline and

[1] Plaintiffs also provided additional information to the attorneys for the State, at their request, about Dr. Collingwood's declarations.

provides the State with additional time to obtain an expert while avoiding a prejudicial delay in continuing the trial date:

Plaintiffs' Expert Reports	Due July 13, 2022
Defendants' Expert Reports	Due August 3, 2022
Plaintiffs' Rebuttal Reports	Due August 17, 2022
Fact Discovery Cutoff	September 11, 2022
Expert Discovery Cutoff	September 20, 2022
Settlement Conference	September 25, 2022
Dispositive Motions:	October 11, 2022
Motions in Limine:	December 12, 2022
Pretrial Order Due	December 28, 2022
Trial Briefs and Exhibits	January 4, 2022

In sum, the four *Flynt* factors support maintaining the current trial date, which ensures that if Plaintiffs are granted relief, such relief would provide voters and the State sufficient notice and time to implement changes. This Court already denied Plaintiffs relief this year based on *Purcell* considerations, and justice requires Plaintiffs not suffer the same irreparable harm twice. As such, Plaintiffs do not believe that any modification to the trial date is warranted. However, if this Court believes a modification is necessary, Plaintiffs request that it limit any continuance to one month from the scheduled trial date, with corresponding one-month adjustments to deadlines for expert reports, discovery, dispositive motions, and other pre-trial deadlines.

CONCLUSION

For the foregoing reasons, the State of Washington's Motion to Modify Scheduling Order and Extend Trial Date should be denied. If the Court believes a continuance is necessary, Plaintiffs respectfully request that it not exceed one month, with corresponding adjustments to other pre-trial deadlines.

Dated: July 6, 2022

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CERTIFICATE OF SERVICE

I certify that all counsel of record were served a copy of the foregoing this 6th day of July, 2022 via the Court's CM/ECF system.

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The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SUSAN SOTO PALMER, et. al.,

Plaintiffs,

v.

STEVEN HOBBS, et. al.,

Defendants,

and

JOSE TREVINO, ISMAEL CAMPOS, and ALEX YBARRA,

Intervenor-Defendants.

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

Judge: Robert S. Lasnik

[PROPOSED] ORDER DENYING DEFENDANT STATE OF WASHINGTON'S MOTION TO MODIFY SCHEDULING ORDER AND EXTEND CASE DEADLINES

This matter came before the Court on Defendant State of Washington's Motion to Modify Scheduling Order and Extend Trial Date and Related Dates. The Court has reviewed the State's Motion, the Opposition filed by the Plaintiffs, the State's Reply, and any supporting papers filed therewith

Based on the foregoing, it is hereby ORDERED that Defendant State of Washington's Motion is DENIED.

In the alternative to a continuance, it is further ordered that the following pre-trial deadlines shall apply to this case:

Plaintiffs' Expert Reports	Due July 13, 2022
Defendants' Expert Reports	Due August 3, 2022

Plaintiffs' Rebuttal Reports	Due August 17, 2022
Fact Discovery Cutoff	September 11, 2022
Expert Discovery Cutoff	September 20, 2022
Settlement Conference	September 25, 2022
Dispositive Motions:	October 11, 2022
Motions in Limine:	December 12, 2022
Pretrial Order Due	December 28, 2022
Trial Briefs and Exhibits	January 4, 2022

IT IS SO ORDERED.

DATED this ____ day of _____, 2022.

PRESENTED BY:

By: */s/ Edwardo Morfin*

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CERTIFICATE OF SERVICE

I certify that all counsel of record were served a copy of the foregoing this 6th day of July, 2022 via the Court's CM/ECF system.

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

SUSAN SOTO PALMER, *et al.*,

Plaintiffs,

v.

STEVEN HOBBS, *et al.*,

Defendants,

And

JOSE TREVINO, *et al.*,

Intervenor-Defendants.

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

MEMORANDUM OF DECISION

Plaintiffs, five registered Latino[1] 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.

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

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

A. Redistricting Process

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

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

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

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

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

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

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

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

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

RCW 44.05.090.

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

The redistricting plan as enacted in February 2022 contains a legislative district in the Yakima Valley region, LD 15, that has a Hispanic citizen voting age population

[4] Though not relevant to the results analysis which ultimately resolves this case, the evidence at trial showed that the Commission faced and overcame a set of challenges unlike anything any prior Commission had ever faced. Not only did the COVID-19 pandemic prevent the Commissioners from meeting face-to-face, but the Commission's schedule was compressed by several months as a result of a delay in receiving the census data and a statutory change in the deadline for submission of the redistricting plan to the Legislature. In addition, the Commission was the first in Washington history to address the serious possibility that the VRA imposed redistricting requirements that had to be accommodated along with the traditional redistricting criteria laid out in Washington's constitution and statutes.

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

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

B. Three-Part *Gingles* Framework

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

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

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

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

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

> provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
>
> 4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
>
> 5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
>
> 6. whether political campaigns have been characterized by overt or subtle racial appeals;
>
> 7. the extent to which members of the minority group have been elected to public office in the jurisdiction[;]
>
> [8.] whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group[; and]
>
> [9.] whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

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

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

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

C. Numerosity and Geographic Compactness

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

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

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

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

of the same experiences and concerns regardless of whether they live in Yakima, Pasco, or along the highways and rivers in between.[7]

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

D. Political Cohesiveness

The second *Gingles* precondition focuses on whether the Latino community in the relevant area is politically cohesive, such that it would rally around a preferred candidate. *Milligan*, 143 S.Ct. at 1503. Each of the experts who addressed this issue, including Intervenors' expert, testified that Latino voters overwhelmingly favored the same candidate in the vast majority of the elections studied. The one exception to this unanimous opinion was the 2022 State Senate race pitting a Latina Republican against a white Democrat. With regards to that election, Dr. Owens' analysis showed a 52/48 split in the Latino vote, which he interpreted as a lack of cohesion. Dr. Collingwood, on the other hand, calculated that between 60-68% of the Latino vote went to the white Democrat, a showing of moderate cohesion that was consistent with the overall pattern of racially polarized voting.[8] Despite this one point of disagreement in the expert testimony, the

[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.

[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

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

E. Impact of the Majority Vote

The third *Gingles* precondition focuses on whether the challenged district boundaries allow the non-Hispanic white majority to thwart the cohesive minority vote. *Milligan*, 143 S.Ct. at 1503. In order to have a chance at succeeding on their Section 2 claim, plaintiffs must show not only that the relevant minority and majority communities are politically cohesive, but also that they are in opposition such that the majority overwhelms the choice of the minority. Dr. Collingwood concluded, and Dr. Alford confirmed, that white voters in the Yakima Valley region vote cohesively to block the Latino-preferred candidates in the majority of elections (approximately 70%). Intervenors do not dispute the data or the opinions offered by Drs. Collingwood and Alford, but argue that because the margins by which the white-preferred candidates win are, in some instances, quite small, relief is unavailable under Section 2. Plaintiffs have shown "that the white majority votes sufficient as a bloc to enable it – in the absence of special circumstances, such as the minority candidate running unopposed . . . – usually to defeat the minority's preferred candidate." *Gingles*, 478 U.S. at 51. A defeat is a defeat,

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his Republican opponent. The question under the second *Gingles* precondition is whether Latino voters in the relevant area exhibit sufficient political cohesiveness to elect their preferred candidate – of any party or no party – if given the 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.

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

Finally Intervenors argue that because the Latino community in the Yakima Valley region generally prefers Democratic candidates, its choices are partisan and, therefore, the community's losses at the polls are not "on account of race or color" as required for a successful claim under Section 2(a). While the Court will certainly have to determine whether the totality of the circumstances in the Yakima Valley region shows that Latino voters have less opportunity than white voters to elect representatives of their choice on account of their ethnicity (as opposed to their partisan preferences), that question does not inform the political cohesiveness or bloc voting analyses. *See Milligan*, 143 S.Ct. at 1503 (describing the second and third *Gingles* preconditions without reference to the cause of the bloc voting); *Gingles*, 478 U.S. at 100 (O'Connor, J., concurring) (finding that defendants cannot rebut statistical evidence of divergent racial voting patterns by offering evidence that the patterns may be explained by causes other than race, although the

[9] Although small margins of defeat do not impact the cohesiveness and/or bloc voting analyses, the closeness of the 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*

of Yakima, 40 F. Supp.3d 1377 (E.D. Wash. 2014). *See also Portugal*, 530 P.3d at 1006. While progress has been made towards making registration and voting more accessible to all Washington voters, those advances have been hard won, following decades of community organizing and multiple lawsuits designed to undo a half century of blatant anti-Latino discrimination.

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

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

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

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

2. Extent of Racially Polarized Voting

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

3. Voting Practices That May Enhance the Opportunity for Discrimination

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

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

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

4. Access to Candidate Slating Process

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

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. Intervenors 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

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

6. Overt or Subtle Racial Appeals in Political Campaigns

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

Intervenors take the position that illegal immigration is a fair topic for political debate, and it is. But the Senate Factors are designed to guide the determination of whether

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

7. Success of Latino Candidates

This Senate Factor evaluates the extent to which members of the minority group have been elected to public office in the jurisdiction, a calculation made more difficult in this case by the fact that the boundaries of the "jurisdiction" have moved over time. The parties agree, however, that in the history of Washington State, only three Latinos were elected to the state Legislature from legislative districts that included parts of the Yakima Valley region. That is a "very, very small number" compared to the number of representatives elected over time and considering the large Latino population in the area. Trial Tr. at 145 (Dr. Estrada testifying). Even when the boundaries of the "jurisdiction" are reduced to county lines, Latino candidates have not fared well in countywide elections: as of the time of trial, only one Latino had ever been elected to the three-member Board of

Yakima County Commissioners, and no Latino had ever been elected to the Franklin County Board of Commissioners.[10]

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

8. Responsiveness of Elected Officials

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

[10] Intervenors criticize Dr. Estrada for disregarding municipal elections, but the Section 2 claim is based on allegations that the boundaries of LD 15 were drawn in such a way that it cracked the Latino vote, a practice that is 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.

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

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

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

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 Intervenors 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, Intervenors 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

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

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

Intervenors argue that the proportionality inquiry must focus on how many legislative districts are represented by at least one Democrat, whom Latino voters are presumed to prefer. From that number, Intervenors calculate that 63% of Washington's legislative districts are Latino "opportunity districts" as defined in *Bartlett v. Strickland*,

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

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

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

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

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

* * *

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

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

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

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

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

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

Trial Tr. at 842.

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.

opportunity than whites to elect their preferred representatives." *Gingles*, 478 U.S. at 63. But Justice O'Connor disagreed with Justice Brennan on this point only because she could imagine a very specific situation in which the reason for the divergence between white and minority voters could be relevant to evaluating a claim for voter dilution. Such would be the case, she explained, if the "candidate preferred by the minority group in a particular election was rejected by white voters for reasons other than those which made the candidate the preferred choice of the minority group." *Gingles*, 478 U.S. at 100. In that situation, the oddity that made the candidate unpalatable to the white majority would presumably not apply to another minority-preferred candidate who might then "be able to attract greater white support in future elections," reducing any inference of systemic vote dilution. *Gingles*, 478 U.S. at 100. There is no evidence that Latino-preferred candidates in the Yakima Valley region are rejected by white voters for any reason other than the policy/platform reasons which made those candidates the preferred choice, and there is no reason to suspect that future elections will see more white support for candidates who support unions, farmworker rights, expanded healthcare, education, and housing options, *etc*. Especially in light of the evidence showing significant past discrimination against Latinos, on-going impacts of that discrimination, racial appeals in campaigns, and a lack of responsiveness on the part of elected officials, plaintiffs have shown inequality in electoral opportunities in the Yakima Valley region: they prefer candidates who are responsive to the needs of the Latino community whereas their white neighbors do not. The fact that the candidates identify with certain partisan labels does not detract from this finding.

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

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

Dated this 10th day of August, 2023.

Robert S. Lasnik
United States District Judge

United States District Court

WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN SOTO PALMER, *et al.*,

Plaintiffs,

v.

STEVEN HOBBS, *et al.*,

Defendants.

and

JOSE TREVINO, *et al.*,

Intervenor-Defendants.

JUDGMENT IN A CIVIL CASE

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

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

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

THE COURT HAS ORDERED THAT:

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

DATED this 11th day of August, 2023.

RAVI SUBRAMANIAN,
Clerk of the Court

By: */s/ Victoria Ericksen*
Deputy Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Susan Soto Palmer, et al.,

Plaintiff(s),

v.

Jose Trevino, et al.,

Intervenor Defendants,

and

Steven Hobbs, et al.,

Defendant(s).

NOTICE OF CIVIL APPEAL

Case No 3:22-cv-05035-RSL

District Court Judge
Robert S. Lasnik

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

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

Judgment in a Civil Case
(Name of Order/Judgment)

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

Dated: 09/08/2023 .

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

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

/s/ Andrew R. Stokesbary

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

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

Molly C. Dwyer
Clerk of Court

September 12, 2023

No.:	23-35595
D.C. No.:	3:22-cv-05035-RSL
Short Title:	Susan Palmer, et al v. Jose Trevino, et al

Dear Appellant/Counsel

A copy of your notice of appeal/petition has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit. The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number whenever you communicate with this court regarding this case.

Motions filed along with the notice of appeal in the district court are not automatically transferred to this court for filing. Any motions seeking relief from this court must be separately filed in this court's docket.

Please furnish this docket number immediately to the court reporter if you place an order, or have placed an order, for portions of the trial transcripts. The court reporter will need this docket number when communicating with this court.

The due dates for filing the parties' briefs and otherwise perfecting the appeal have been set by the enclosed "Time Schedule Order," pursuant to applicable FRAP rules. These dates can be extended only by court order. Failure of the appellant to comply with the time schedule order will result in automatic dismissal of the appeal. 9th Cir. R. 42-1.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 12 2023

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

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

Plaintiffs - Appellees,

v.

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

Defendants,

and

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

Intervenor-Defendants - Appellants.

No. 23-35595

D.C. No. 3:22-cv-05035-RSL
U.S. District Court for Western Washington, Tacoma

TIME SCHEDULE ORDER

The parties shall meet the following time schedule.

If there were reported hearings, the parties shall designate and, if necessary, cross-designate the transcripts pursuant to 9th Cir. R. 10-3.1. If there were no reported hearings, the transcript deadlines do not apply.

Tue., September 19, 2023	Appellant's Mediation Questionnaire due. If your registration for Appellate CM/ECF is confirmed after this date, the Mediation Questionnaire is due within one day of receiving the email from PACER confirming your registration.

Tue., October 10, 2023	Transcript shall be ordered.
Thu., November 9, 2023	Transcript shall be filed by court reporter.
Thu., December 21, 2023	Appellant's opening brief and excerpts of record shall be served and filed pursuant to FRAP 31 and 9th Cir. R. 31-2.1.
Mon., January 22, 2024	Appellee's answering brief and excerpts of record shall be served and filed pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

The optional appellant's reply brief shall be filed and served within 21 days of service of the appellee's brief, pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

Failure of the appellant to comply with the Time Schedule Order will result in automatic dismissal of the appeal. See 9th Cir. R. 42-1.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

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

SUSAN SOTO PALMER, *et al.*,

Plaintiffs,

v.

STEVEN HOBBS, *et al.*,

Defendants,

And

JOSE TREVINO, *et al.*,

Intervenor-Defendants.

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

ORDER

On August 10, 2023, the Court found that the boundaries of Washington Legislative District 15, in combination with the social, economic, and historical conditions in the Yakima Valley region, results in an inequality in the electoral opportunities enjoyed by white and Latino voters in the area. Judgment was entered in plaintiffs' favor on their Section 2 Voting Rights Act claim, and the State of Washington was given an opportunity to adopt revised legislative district maps for the Yakima Valley region pursuant to the process set forth in the Washington State Constitution and state statutes. News reports

indicate, however, that the Legislature does not intend to reconvene the bipartisan redistricting commissions.

The State shall file a status report on or before September 29, 2023, formally notifying the Court regarding the Legislature's position. If, as appears to be the case, the Legislature intends to leave the redistricting process to the Court, additional input and information from the parties will be requested.

Dated this 15th day of September, 2023.

Robert S. Lasnik
United States District Judge

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

SUSAN SOTO PALMER, *et al.*,

Plaintiffs,

v.

STEVEN HOBBS, *et al.*,

Defendants,

And

JOSE TREVINO, *et al.*,

Intervenor-Defendants.

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

ORDER

On August 10, 2023, the Court found that the boundaries of Washington Legislative District 15, in combination with the social, economic, and historical conditions in the Yakima Valley region, results in an inequality in the electoral opportunities enjoyed by white and Latino voters in the area. Judgment was entered in plaintiffs' favor on their Section 2 Voting Rights Act claim, and the State of Washington was given an opportunity to adopt revised legislative district maps for the Yakima Valley region pursuant to the process set forth in the Washington State Constitution and state statutes. When news reports indicated that the Majority Caucus Leaders of both houses of the Washington State

Legislature had declined to reconvene the bipartisan redistricting commission, the State was directed to file a status report notifying the Court of the Legislature's position. Having reviewed the State's submission and the responses of plaintiffs and the Minority Caucus Leaders, the Court finds as follows:

Given the practical realities of the situation as revealed by the submissions of the interested parties, the Court will not wait until the last minute to begin its own redistricting efforts. If, as the Minority Caucus Leaders hope, the Legislature is able to adopt revised legislative maps for the Yakima Valley region in a timely manner, the Court's parallel process, set forth below, will have been unnecessary. The likelihood that that will happen has lessened significantly since the Court issued its Memorandum of Decision, however. Establishing earlier deadlines for the presentation of alternative remedial proposals will allow a more deliberate and informed evaluation of those proposals.

The parties shall meet and confer with the goal of reaching a consensus on a legislative district map that will provide equal electoral opportunities for both white and Latino voters in the Yakima Valley regions, keeping in mind the social, economic, and historical conditions discussed in the Memorandum of Decision. If the parties are unable to reach agreement, they shall (a) further confer regarding nominees to act as Special Master to assist the Court in the assessment of proposed remedial plans and to make modifications to those plans as necessary and (b) file alternative remedial proposals and nominations on the following schedule:

December 1, 2023 -- Deadline for the parties[1] to submit remedial proposals,[2] supporting memoranda, and exhibits (including expert reports).

December 1, 2023 – Deadline for the parties to jointly identify three candidates for the Special Master position (including their resumes/CVs, a statement of interest, availability, and capacity) and to provide their respective positions on each candidate.

December 22, 2023 – Deadline for the parties to submit memoranda and exhibits (including rebuttal expert reports) in response to the remedial proposals.

January 5, 2024 – Deadline for the parties to submit memoranda and exhibits (including sur-rebuttal expert reports) in reply.

IT IS SO ORDERED.

Dated this 4th day of October, 2023.

Robert S. Lasnik
United States District Judge

[1] No party has identified an individual or entity that has unique information or perspective that could help the Court beyond the assistance that the parties and their lawyers are able to provide, nor have they shown any other justification for the allowance of amicus briefs.

[2] The parties shall discuss the format and functionality of the remedial proposals, but the Court generally favors plaintiffs' suggestions that the maps include important roadways, important geographical markers, and voting precinct boundaries, that the maps be in a zoomable pdf format, and that the proposals include demographic data (e.g., total population per district and race by district of total population and citizen voting age population). Contemporaneous with the filing, all counsel of record shall be provided shapefiles, a comma separated value file, or an equivalent file that is sufficient to load the proposed plan into commonly available mapping software.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN SOTO PALMER, *et al*.,

Plaintiffs,

v.

STEVEN HOBBS, *et al*.,

Defendants,

and

JOSE TREVINO, *et al*.,

Intervenor-Defendants.

NO. C22-5035RSL

ORDER DENYING EMERGENCY MOTION TO STAY PROCEEDINGS

This matter comes before the Court on "Intervenor-Defendants' Emergency Motion to Stay Proceedings." Dkt. # 232. Three months after the Court entered judgment in this matter, two months after Intervenor-Defendants filed their notice of appeal, and less than one month before alternative remedial maps are due, Intervenor-Defendants filed an emergency motion to stay.[1] They essentially argue that the parties should not be required to participate in post-trial remedial activities because the United States Supreme Court (1) may grant the writ of certiorari Intervenor-Defendants filed in this case, (2) may stay consideration of this case pending resolution of a related case, *Garcia v. Hobbs*, O.T. 2023, No. 23-467, (3) may find

[1] Intervenor-Defendants filed two pre-trial motions to stay that were based on the fact that *Allen v. Milligan*, 599 U.S. __, 143 S. Ct. 1487 (2023), was then pending before the United States Supreme Court and might impact the analysis of a vote dilution claim under Section 2 of the Voting Rights Act. Both motions were denied.

that *Garcia* was wrongly decided and remand to the three-judge panel for further proceedings, (4) may continue to hold this case in abeyance while the three-judge panel determines *Garcia* on the merits, and (5) may ultimately side with the Intervenor-Defendants in both this case and *Garcia*. Intervenor-Defendants provide no estimate of how long the requested stay would be in place, nor do they acknowledge that failure to create remedial maps in the next few months will, as plaintiffs proved at trial, deprive plaintiffs of their voting rights in the next election cycle.

The Court has discretionary power to stay proceedings, but the party seeking a stay "must make out a clear case of hardship or inequity in being required to go forward[] if there is even a fair possibility that the stay for which he prays will work damage to someone else." *Landis v. North American Co*., 299 U.S. 248, 254-55 (1936). Having considered the memoranda of the parties, the irreparable harm that would result from the requested stay, the minimal hardship that will result from moving forward with the remedial process, the failure to show a reasonable probability of success on appeal, the public's interest in the timely resolution of disputes regarding legislative districts, and the undefined length of the delay in relation to the urgency of the claims presented, *Lockyer v. Mirant Corp*., 398 F.3d 1098, 1109-13 (9th Cir. 2005), the Court DENIES the emergency motion to stay.

Dated this 27th day of November, 2023.

Robert S. Lasnik
United States District Judge