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

8 SUSAN SOTO PALMER, *et al.*,

9 Plaintiffs,

10 v.

11 STEVEN HOBBS, *et al.*,

12 Defendants,

13 And

14 JOSE TREVINO, *et al.*,

15 Intervenor-Defendants.

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

MEMORANDUM OF DECISION

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17 Plaintiffs, five registered Latino<sup>1</sup> voters in Legislative Districts 14 and 15 in the  
18 Yakima Valley region of Washington State,<sup>2</sup> brought suit seeking to stop the Secretary of  
19 State from conducting elections under a redistricting plan adopted by the Washington State  
20 Legislature on February 8, 2022. Plaintiffs argue that the redistricting plan cracks the  
21 Latino vote and is therefore invalid under Section 2 of the Voting Rights Act of 1965

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24 <sup>1</sup> 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.

25 <sup>2</sup> The Court uses the terms “Yakima Valley region” as a shorthand for the geographic region on and around the  
26 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.

1 (“VRA”), 52 U.S.C. § 10301. “Cracking” is a type of vote dilution that involves splitting  
2 up a group of voters “among multiple districts so that they fall short of a majority in each  
3 one.” *Portugal v. Franklin Cnty.*, \_\_ Wn.3d \_\_, 530 P.3d 994, 1001 (2023) (quoting *Gill v.*  
4 *Whitford*, \_\_ U.S. \_\_, 138 S.Ct. 1916, 1924 (2018)). Intervenors, three registered Latino  
5 voters from legislative districts whose boundaries may be impacted if plaintiffs prevail in  
6 this litigation, were permitted to intervene to oppose plaintiffs’ Section 2 claim because, at  
7 the time, there were no other truly adverse parties.<sup>3</sup>  
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10 In a parallel litigation, Benancio Garcia III challenged legislative district (“LD”) 15  
11 as an illegal racial gerrymander that violated the Equal Protection Clause of the Fourteenth  
12 Amendment to the United States Constitution. *Garcia v. Hobbs*, C22-5152-RSL-DGE-  
13 LJCVC (W.D. Wash.). Pursuant to 28 U.S.C. § 2284, a three-judge district court was  
14 empaneled to hear that claim. The trial of the Section 2 results claim asserted in *Soto*  
15 *Palmer* began on June 2, 2023, before the undersigned: the Court heard the testimony of  
16 Faviola Lopez, Dr. Loren Collingwood, Dr. Josue Estrada, and Senator Rebecca Saldaña  
17 on that first day. The remainder of the evidence was presented before a panel comprised of  
18 the undersigned, Chief Judge David E. Estudillo, and Circuit Judge Lawrence J.C.  
19 VanDyke between June 5th and June 7th. This Memorandum of Decision deals only with  
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25 <sup>3</sup> The State of Washington was subsequently joined as a defendant to ensure that, if plaintiffs were able to prove  
26 their claims, the Court would have the power to provide all of the relief requested, particularly the development and  
adoption of a VRA-compliant redistricting plan. After retaining its own voting rights expert and reviewing the  
evidence in the case, the State concluded that the existing legislative plan dilutes the Latino vote in the Yakima Valley  
region in violation of Section 2, but strenuously opposed plaintiffs’ claim that it intended to crack Latino voters.

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

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

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15 Article I, § 2, of the United States Constitution requires that Members of the House  
16 of Representatives "be apportioned among the several States ... according to their  
17 respective Numbers." Each state's population is counted every ten years in a national  
18 census, and states rely on census data to apportion their congressional seats into districts.  
19 In Washington, the state constitution provides for a bipartisan commission ("the  
20 Commission") tasked with redistricting state legislative and congressional districts. Wash.  
21 Const. art. II, § 43. The Commission consists of four voting members and one non-voting  
22 member who serves as the chairperson. Wash. Const. art. II, § 43(2). The voting members  
23 are appointed by the legislative leaders of the two largest political parties in each house of  
24 the Legislature. *Id.* A state statute sets forth specific requirements for the redistricting plan:  
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1 (1) Districts shall have a population as nearly equal as is practicable,  
2 excluding nonresident military personnel, based on the population reported  
3 in the federal decennial census as adjusted by RCW 44.05.140.

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

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

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

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

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

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

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

RCW 44.05.090.

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

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

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

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

12 The Supreme Court evaluates claims brought under Section 2 using the so-called  
13 *Gingles* framework developed in *Thornburg v. Gingles*, 478 U.S. 30 (1986).<sup>5</sup> To prove a  
14 violation of Section 2, plaintiffs must satisfy three “preconditions.” *Id.* at 50. First, the  
15 “minority group must be sufficiently large and [geographically] compact to constitute a  
16 majority in a reasonably configured district.” *Wisconsin Legislature v. Wisconsin Elections*  
17 *Comm’n*, 595 U.S. \_\_\_, 142 S.Ct. 1245, 1248 (2022) (per curiam) (citing *Gingles*, 478 U.S.  
18 at 46–51). A district is reasonably configured if it comports with traditional districting  
19 criteria. *See Milligan*, 143 S.Ct. at 1503 (citing *Alabama Legislative Black Caucus v.*  
20 *Alabama*, 575 U.S. 254, 272 (2015)). “Second, the minority group must be able to show  
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25 <sup>5</sup> While voting rights advocates and many legal scholars feared that the Supreme Court would alter, if not  
26 invalidate, the existing analytical framework for Section 2 cases when it decided *Allen v. Milligan* in June 2023, the  
majority instead “decline[d] to recast our § 2 case law” and reaffirmed the *Gingles* inquiry “that has been the baseline  
of our § 2 jurisprudence for nearly forty years.” 599 U.S. \_\_\_, 143 S.Ct. 1487, 1507, 1508 (2023) (internal quotation  
marks and citation omitted).

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

12 If a plaintiff fails to establish the three preconditions “there neither has been a  
13 wrong nor can be a remedy.” *Id.* at 40–41. If, however, a plaintiff demonstrates the three  
14 preconditions, he or she must also show that under the “totality of circumstances” the  
15 political process is not “equally open” to minority voters in that they “have less  
16 opportunity than other members of the electorate to participate in the political process and  
17 to elect representatives of their choice.” 52 U.S.C. § 10301. Factors to be considered when  
18 evaluating the totality of circumstances include:  
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- 21 1. the extent of any history of official discrimination in the state or political  
22 subdivision that touched the right of the members of the minority group to  
23 register, to vote, or otherwise to participate in the democratic process;
- 24 2. the extent to which voting in the elections of the state or political  
25 subdivision is racially polarized;
- 26 3. the extent to which the state or political subdivision has used unusually  
large election districts, majority vote requirements, anti-single shot

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

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

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

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

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

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

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

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

21 In applying Section 2, the Court must keep in mind the ill the statute is designed to  
22 redress. In 1986 and again in 2023, the Supreme Court explained that “[t]he essence of a  
23 § 2 claim is that a certain electoral law, practice, or structure interacts with social and  
24 historical conditions to cause an inequality in the opportunities enjoyed by [minority] and  
25 white voters to elect their preferred representatives.” *Id.* at 47; *see also Milligan*, 143 S.Ct.  
26 at 1503. Where an electoral structure, such as the boundary lines of a legislative district,



1 “operates to minimize or cancel out” minority voters’ “ability to elect their preferred  
2 candidates,” relief under Section 2 may be available. *Gingles*, 478 U.S. at 48; *Milligan*,  
3 143 S.Ct. at 1503. “Such a risk is greatest ‘where minority and majority voters consistently  
4 prefer different candidates’ and where minority voters are submerged in a majority voting  
5 population that ‘regularly defeat[s]’ their choices.” *Milligan*, 143 S.Ct. at 1503 (quoting  
6 *Gingles*, 478 U.S. at 48). Before courts can find a violation of Section 2, they must conduct  
7 “an intensely local appraisal” of the electoral structure at issue, as well as a “searching  
8 practical evaluation of the ‘past and present reality.’” *Milligan*, 143 S.Ct. at 1503 (quoting  
9 *Gingles*, 478 U.S. at 79).<sup>6</sup>

### 12 C. Numerosity and Geographic Compactness

13 It is undisputed that Latino voters in the Yakima Valley region are numerous  
14 enough that they could have a realistic chance of electing their preferred candidates if a  
15 legislative district were drawn with that goal in mind. Plaintiffs have shown that such a  
16 district could be reasonably configured. Dr. Loren Collingwood, plaintiffs’ expert on the  
17 statistical and demographic analysis of political data, presented three proposed maps that  
18 perform similarly or better than the enacted map when evaluated for compactness and  
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22 <sup>6</sup> In writing the majority opinion in *Milligan*, Chief Justice Roberts provides the historical context out of which the  
23 Voting Rights Act arose, starting from the end of the Civil War and going through the 1982 amendments to the  
24 statute. The primer chronicles the “parchment promise” of the Fifteenth Amendment, the unchecked proliferation of  
25 literacy tests, poll taxes, and “good-morals” requirements, the statutory effort to “banish the blight of racial  
26 discrimination in voting,” the judiciary’s narrow interpretation of the original VRA, and the corrective amendment  
proposed by Senator Bob Dole that reinvigorated the fight against electoral schemes that have a disparate impact on  
minorities even if there was no discriminatory intent. 143 S.Ct. at 1498–1501 (citation omitted). The summary is a  
forceful reminder that ferreting out racial discrimination in voting does not merely involve ensuring that minority  
voters can register to vote and go to the polls without hindrance, but also requires an evaluation of facially neutral  
electoral practices that have the effect of keeping minority voters from the polls and/or their preferred candidates from  
office.

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

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

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

#### 8 **D. Political Cohesiveness**

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

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

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

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

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5 The third *Gingles* precondition focuses on whether the challenged district  
6 boundaries allow the non-Hispanic white majority to thwart the cohesive minority vote.  
7 *Milligan*, 143 S.Ct. at 1503. In order to have a chance at succeeding on their Section 2  
8 claim, plaintiffs must show not only that the relevant minority and majority communities  
9 are politically cohesive, but also that they are in opposition such that the majority  
10 overwhelms the choice of the minority. Dr. Collingwood concluded, and Dr. Alford  
11 confirmed, that white voters in the Yakima Valley region vote cohesively to block the  
12 Latino-preferred candidates in the majority of elections (approximately 70%). Intervenors  
13 do not dispute the data or the opinions offered by Drs. Collingwood and Alford, but argue  
14 that because the margins by which the white-preferred candidates win are, in some  
15 instances, quite small, relief is unavailable under Section 2. Plaintiffs have shown “that the  
16 white majority votes sufficient as a bloc to enable it – in the absence of special  
17 circumstances, such as the minority candidate running unopposed . . . – usually to defeat  
18 the minority’s preferred candidate.” *Gingles*, 478 U.S. at 51. A defeat is a defeat,  
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25 his Republican opponent. The question under the second *Gingles* precondition is whether Latino voters in the relevant  
26 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.

1 regardless of the vote count. Intervenors provide no support for the assertion that losses by  
2 a small margin are somehow excluded from the tally when determining whether there is  
3 legally significant bloc voting or whether the majority “usually” votes to defeat the  
4 minority’s preferred candidate. White bloc voting is “legally significant” when white  
5 voters “normally . . . defeat the combined strength of minority support plus white  
6 ‘crossover’ votes.” *Gingles*, 478 at 56. Such is the case here.<sup>9</sup>  
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9 Finally Intervenors argue that because the Latino community in the Yakima Valley  
10 region generally prefers Democratic candidates, its choices are partisan and, therefore, the  
11 community’s losses at the polls are not “on account of race or color” as required for a  
12 successful claim under Section 2(a). While the Court will certainly have to determine  
13 whether the totality of the circumstances in the Yakima Valley region shows that Latino  
14 voters have less opportunity than white voters to elect representatives of their choice on  
15 account of their ethnicity (as opposed to their partisan preferences), that question does not  
16 inform the political cohesiveness or bloc voting analyses. *See Milligan*, 143 S.Ct. at 1503  
17 (describing the second and third *Gingles* preconditions without reference to the cause of  
18 the bloc voting); *Gingles*, 478 U.S. at 100 (O’Connor, J., concurring) (finding that  
19 defendants cannot rebut statistical evidence of divergent racial voting patterns by offering  
20 evidence that the patterns may be explained by causes other than race, although the  
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25 <sup>9</sup> Although small margins of defeat do not impact the cohesiveness and/or bloc voting analyses, the closeness of the  
26 elections is not irrelevant. As Dr. Alford suggests, it goes to the extent of the map alterations that may be necessary to  
remedy the Section 2 violation. It does not, however, go to whether there is or is not a Section 2 violation in the first  
place.

1 evidence may be relevant to the overall voter dilution inquiry); *Solomon v. Liberty Cnty.*  
2 *Comm'rs*, 221 F.3d 1218, 1225 (11th Cir. 2000) (noting that *Gingles* establishes  
3 preconditions, but they are not necessarily dispositive if other circumstances, such as  
4 political or personal affiliations of the different racial groups with different candidates,  
5 explain the election losses); *Baird v. Consolidated City of Indianapolis*, 976 F.2d 357, 359,  
6 361 (7<sup>th</sup> Cir. 1992) (assuming that plaintiffs can prove the three *Gingles* preconditions  
7 before considering as part of the totality of the circumstances whether electoral losses had  
8 more to do with party than with race); *but see LULAC v. Clements*, 999 F.2d 831, 856 (5<sup>th</sup>  
9 Cir. 1993) (finding that a white majority that votes sufficiently as a bloc to enable it to  
10 usually defeat the minority's preferred candidate is legally significant under the third  
11 *Gingles* precondition only if based on the race of the candidate).

#### 12 **F. Totality of the Circumstances**

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16 “[A] plaintiff who demonstrates the three preconditions must also show, under the  
17 ‘totality of circumstances,’ that the political process is not ‘equally open’ to minority  
18 voters.” *Milligan*, 143 S.Ct. at 1503 (quoting *Gingles*, 478 U.S. at 45–46). Proof that the  
19 contested electoral practice – here, the drawing of the boundaries of LD 15 – was adopted  
20 with an intent to discriminate against Latino voters is not required. Rather, the correct  
21 question “is whether ‘as a result of the challenged practice or structure plaintiffs do not  
22 have an equal opportunity to participate in the political processes and to elect candidates of  
23 their choice.’” *Gingles*, 478 U.S. at 44 (quoting S. Rep. 97-417 at 28, 1982 U.S.C.C.A.N.  
24 at 206). In enacting Section 2, Congress recognized that “voting practices and procedures  
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1 that have discriminatory results perpetuate the effects of past purposeful discrimination.”  
2 *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  
3 Court “must assess the impact of the contested structure or practice on minority electoral  
4 opportunities ‘on the basis of objective factors,’” *i.e.*, the Senate Factors, *Gingles*, 478 U.S.  
5 at 44 (quoting S. Rep. 97–417, at 27, 1982 U.S.C.C.A.N. at 205), in order to determine  
6 whether the structure or practice is causally connected to the observed statistical disparities  
7 between Latino and white voters in the Yakima Valley region, *Gonzalez v. Arizona*, 677  
8 F.3d 383, 405 (9th Cir. 2012)). “[T]here is no requirement that any particular number of  
9 [the Senate Factors] be proved, or that a majority of them point one way or the other.”  
10 *Gingles*, 478 U.S. at 45 (quoting S. Rep. No. 97–417 at 29, 1982 U.S.C.C.A.N. at 209)  
11 (internal quotation marks omitted).  
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### 15 **1. History of Official Discrimination**

16 The first Senate Factor requires an evaluation of the history of official  
17 discrimination in the state or political subdivision that impacted the right of Latinos to  
18 register, to vote, or otherwise to participate in the democratic process. Plaintiffs provided  
19 ample historical evidence of discriminatory English literacy tests, English-only election  
20 materials, and at-large systems of election that prevented or suppressed Latino voting. In  
21 addition, plaintiffs identified official election practices and procedures that have prevented  
22 Latino voters in the Yakima Valley region from electing candidates of their choice as  
23 recently as the last few years. *See Aguilar v. Yakima Cnty.*, No. 20-2-0018019 (Kittitas  
24 Cnty. Super. Ct.); *Glatt v. City of Pasco*, 4:16-cv-05108-LRS (E.D. Wash.); *Montes v. City*  
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1 *of Yakima*, 40 F. Supp.3d 1377 (E.D. Wash. 2014). *See also Portugal*, 530 P.3d at 1006.

2 While progress has been made towards making registration and voting more accessible to  
3 all Washington voters, those advances have been hard won, following decades of  
4 community organizing and multiple lawsuits designed to undo a half century of blatant  
5 anti-Latino discrimination.  
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7         Intervenors do not dispute this evidence, but argue that plaintiffs have failed to  
8 show that the “litany of past miscarriages of justice . . . work to deny Hispanics equal  
9 opportunity to participate in the political process today.” Dkt. # 215 at 26. The Court  
10 disagrees. State Senator Rebecca Saldaña explained that historic barriers to voting have  
11 continuing effects on the Latino population. Seemingly small, everyday municipal  
12 decisions, like which neighborhoods would get sidewalks, as well as larger decisions about  
13 who could vote, were for decades decided by people who owned property.  
14  
15

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

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



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

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

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

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

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

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

6         Intervenors generally ignore this testimony and the experts' reports, baldly asserting  
7 that there is "no evidence" of other voting practices or procedures that discriminate against  
8 Latino voters in the Yakima Valley region. Dkt. # 215 at 27. The State, for its part,  
9 challenges only the signature verification argument. It appears that Dr. Estrada's opinion  
10 that Latino voters are disproportionately impacted by the process is based entirely on an  
11 article published on Crosscut.com which summarized two other articles from a non-profit  
12 organization called Investigate West. While it may be that experts in the fields of history  
13 and Latino voter suppression would rely on facts asserted in secondary articles when  
14 developing their opinions, the Court need not decide the admissibility of this opinion under  
15 Fed. R. Ev. 703. Even without considering the possibility that the State's signature  
16 verification process, as implemented in Yakima and Franklin Counties, suppresses the  
17 Latino vote, plaintiffs have produced un rebutted evidence of other electoral practices that  
18 may enhance the opportunity for discrimination against the minority group.  
19  
20  
21

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

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

## 5. Continuing Effects of Discrimination

Senate Factor 5 evaluates “the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process.” *Gingles*, 478 U.S. at 37. 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

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

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

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

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

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

11 This Senate Factor evaluates the extent to which members of the minority group  
12 have been elected to public office in the jurisdiction, a calculation made more difficult in  
13 this case by the fact that the boundaries of the “jurisdiction” have moved over time. The  
14 parties agree, however, that in the history of Washington State, only three Latinos were  
15 elected to the state Legislature from legislative districts that included parts of the Yakima  
16 Valley region. That is a “very, very small number” compared to the number of  
17 representatives elected over time and considering the large Latino population in the area.  
18 Trial Tr. at 145 (Dr. Estrada testifying). Even when the boundaries of the “jurisdiction” are  
19 reduced to county lines, Latino candidates have not fared well in countywide elections: as  
20 of the time of trial, only one Latino had ever been elected to the three-member Board of  
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26

1 Yakima County Commissioners, and no Latino had ever been elected to the Franklin  
2 County Board of Commissioners.<sup>10</sup>

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

### 17 **8. Responsiveness of Elected Officials**

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

24  
25 <sup>10</sup> Intervenors criticize Dr. Estrada for disregarding municipal elections, but the Section 2 claim is based on  
26 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.

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

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

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

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

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

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

16 The ninth Senate Factor asks whether the reasons given for the redrawn boundaries  
17 of LD 15 are tenuous. They are not. The four voting members of the redistricting  
18 Commission testified at trial that they each cared deeply about doing their jobs in a fair and  
19 principled manner and tried to comply with the law as they understood it to the best of  
20 their abilities. The boundaries that were drawn by the bipartisan and independent  
21 commission reflected a difficult balance of many competing factors and could be justified  
22 in any number of rational, nondiscriminatory ways.  
23  
24  
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26



## 10. Proportionality

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2 Section 2(b) specifies that courts can consider the extent to which members of a  
3 protected class have been elected to office in the jurisdiction (an evaluation performed  
4 under Senate Factor 7), but expressly rejects any right “to have members of a protected  
5 class elected in numbers equal to their proportion in the population.” 52 U.S.C.  
6 § 10301(b). The Supreme Court recently made clear that application of the *Gingles*  
7 preconditions, in particular the geographically compact and reasonably configured  
8 requirements of the first precondition, will guard against any sort of proportionality  
9 requirement. *Milligan*, 143 S.Ct. at 1518.  
10  
11

12 Other Supreme Court cases evaluate proportionality in a different way, however,  
13 comparing the percentage of districts in which the minority has an equal opportunity to  
14 elect candidates of its choice with the minority’s share of the CVAP. It is, after all,  
15 possible that despite having shown racial bloc voting and continuing impacts of  
16 discrimination, a minority group may nevertheless hold the power to elect candidates of its  
17 choice in numbers that mirror its share of the voting population, thereby preventing a  
18 finding of voter dilution. *See Johnson v. De Grandy*, 512 U.S. 997, 1006 (1994). In *De*  
19 *Grandy*, the Supreme Court acknowledged the district court’s *Gingles* analysis and  
20 conclusions in favor of the minority population, but found that the Hispanics of Dade  
21 County, Florida, nevertheless enjoyed equal political opportunity where they constituted  
22 50% of the voting-age population and would make up supermajorities in 9 of the 18 new  
23 legislative districts in the county. In those circumstances, the Court could “not see how  
24  
25  
26

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

7  
8 The proportionality inquiry supports plaintiffs’ claim for relief under Section 2 even  
9 if evaluated on a statewide basis. Although Latino voters make up between 8 and 9% of  
10 Washington’s CVAP, they hold a bare majority in only one legislative district out of 49, or  
11 2%. Given the low voter turnout rate among Latino voters in the bare-majority district,  
12 Latinos do not have an effective majority anywhere in the State. They do not, therefore,  
13 enjoy roughly proportional opportunity in Washington.

14  
15  
16 Interveners argue that the proportionality inquiry must focus on how many  
17 legislative districts are represented by at least one Democrat, whom Latino voters are  
18 presumed to prefer. From that number, Interveners calculate that 63% of Washington’s  
19 legislative districts are Latino “opportunity districts” as defined in *Bartlett v. Strickland*,

20  
21  
22 <sup>11</sup> The Court notes that the record in *Perry* showed “the presence of racially polarized voting – and the possible  
23 submergence of minority votes – throughout Texas,” and it therefore made “sense to use the entire State in assessing  
24 proportionality.” 548 U.S. at 438. There is nothing in the record to suggest the presence of racially polarized voting  
25 throughout Washington, and almost all of the testimony and evidence at trial focused on the totality of the  
26 circumstances in the Yakima Valley region. A statewide assessment of proportionality seems particularly  
inappropriate here where the interests and representation of Latinos in the rural and agricultural Yakima Valley region  
may diverge significantly from those who live in the more urban King and Pierce Counties. Applying a statewide  
proportionality check in these circumstances “would ratify ‘an unexplored premise of highly suspect validity: that in  
any given voting jurisdiction ..., the rights of some minority voters under § 2 may be traded off against the rights of  
other members of the same minority class.’” *Perry*, 548 U.S. at 436 (quoting *De Grandy*, 512 U.S. at 1019).

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

15       Regardless, the Court finds that, in the circumstances of this case, the  
16 proportionality check does not overcome the other evidence of Latino vote dilution in LD  
17 15. The totality of the circumstances factors “are not to be applied woodenly,” *Old Person*,  
18 230 F.3d at 1129, and “the degree of probative value assigned to proportionality may vary  
19 with other facts,” *De Grandy*, 512 U.S. at 1020. In this case, the distinct history of and  
20 economic/social conditions facing Latino voters in the Yakima Valley region make it  
21 particularly inappropriate to trade off their rights in favor of opportunity or representation  
22 enjoyed by others across the state. The intensely local appraisal set forth in the preceding  
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26 <sup>12</sup> Intervenors also suggest that a comparison of the statewide Latino CVAP with the number of Latino members of the state Legislature is the appropriate way to evaluate proportionality. No case law supports this evaluative method.

1 sections shows that the enactment of LD 15 has diluted the Latino vote in the Yakima  
2 Valley region in violation of plaintiffs’ rights under Section 2. “[B]ecause the right to an  
3 undiluted vote does not belong to the minority as a group, but rather to its individual  
4 members,” the wrong plaintiffs have suffered is remediable under Section 2. *Perry*, 548  
5 U.S. at 437.  
6

7 \* \* \*

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

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

1           Intervenors make two additional arguments that are not squarely addressed through  
2 application of the *Gingles* analysis. The first is that the analysis is inapplicable where the  
3 challenged district already contains a majority Latino CVAP, and the Court should “simply  
4 hold that, as a matter of sound logic, Hispanic voters have equal opportunity to participate  
5 in the democratic process and elect candidates as they choose.” Dkt. # 215 at 13. The  
6 Supreme Court has recognized, however, that “it may be possible for a citizen voting-age  
7 majority to lack real electoral opportunity,” *Perry*, 548 U.S at 428, and the evidence shows  
8 that that is the case here. A majority Latino CVAP of slightly more than 50% is  
9 insufficient to provide equal electoral opportunity where past discrimination, current  
10 social/economic conditions, and a sense of hopelessness keep Latino voters from the polls  
11 in numbers significantly greater than white voters. Plaintiffs have shown that a  
12 geographically and reasonably configured district could be drawn in which the Latino  
13 CVAP constitutes an effective majority that would actually enable Latinos to have a fair  
14 and equal opportunity to obtain representatives of their choice. That is the purpose of  
15 Section 2, and creating a bare, ineffective majority in the Yakima Valley region does not  
16 immunize the redistricting plan from its mandates.  
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23 Trial Tr. at 307-08. Mr. Portugal similarly pointed out that while incremental improvement in political representation  
24 is possible, it will not come without continued effort on the part of the community:

25           I think with advocacy and being able to continue organizing, and not give up, because it’s a lot of  
26 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.

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

21 Intervenor’s make much of the fact that Justice Brennan was joined by only three  
22 other justices when opining that “[i]t is the difference between the choices made by blacks  
23 and white – not the reasons for that difference – that results in blacks having less  
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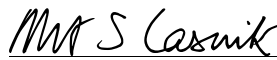
25 <sup>14</sup> As noted above in n.8, there is evidence in the record that Latino voters in the Yakima Valley region did coalesce  
26 around a Republican candidate in the 2020 Superintendent of Public Institutions race. Intervenor’s do not acknowledge  
this divergence from the normal pattern, nor do they explain how it would impact their partisanship argument.

1 opportunity than whites to elect their preferred representatives.” *Gingles*, 478 U.S. at 63.  
2 But Justice O’Connor disagreed with Justice Brennan on this point only because she could  
3 imagine a very specific situation in which the reason for the divergence between white and  
4 minority voters could be relevant to evaluating a claim for voter dilution. Such would be  
5 the case, she explained, if the “candidate preferred by the minority group in a particular  
6 election was rejected by white voters for reasons other than those which made the  
7 candidate the preferred choice of the minority group.” *Gingles*, 478 U.S. at 100. In that  
8 situation, the oddity that made the candidate unpalatable to the white majority would  
9 presumably not apply to another minority-preferred candidate who might then “be able to  
10 attract greater white support in future elections,” reducing any inference of systemic vote  
11 dilution. *Gingles*, 478 U.S. at 100. There is no evidence that Latino-preferred candidates in  
12 the Yakima Valley region are rejected by white voters for any reason other than the  
13 policy/platform reasons which made those candidates the preferred choice, and there is no  
14 reason to suspect that future elections will see more white support for candidates who  
15 support unions, farmworker rights, expanded healthcare, education, and housing options,  
16 *etc.* Especially in light of the evidence showing significant past discrimination against  
17 Latinos, on-going impacts of that discrimination, racial appeals in campaigns, and a lack of  
18 responsiveness on the part of elected officials, plaintiffs have shown inequality in electoral  
19 opportunities in the Yakima Valley region: they prefer candidates who are responsive to  
20 the needs of the Latino community whereas their white neighbors do not. The fact that the  
21 candidates identify with certain partisan labels does not detract from this finding.  
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1 For all of the foregoing reasons, the Court finds that the boundaries of LD 15, in  
2 combination with the social, economic, and historical conditions in the Yakima Valley  
3 region, results in an inequality in the electoral opportunities enjoyed by white and Latino  
4 voters in the area. The Clerk of Court is directed to enter judgment in plaintiffs' favor on  
5 their Section 2 claim. The State of Washington will be given an opportunity to adopt  
6 revised legislative district maps for the Yakima Valley region pursuant to the process set  
7 forth in the Washington State Constitution and state statutes, with the caveat that the  
8 revised maps must be fully adopted and enacted by February 7, 2024.  
9  
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11 The parties shall file a joint status report on January 8, 2024, notifying the Court  
12 whether a reconvened Commission was able to redraw and transmit to the Legislature a  
13 revised map by that date. If the Commission was unable to do so, the parties shall present  
14 proposed maps (jointly or separately) with supporting memoranda and exhibits for the  
15 Court's consideration on or before January 15, 2024. Regardless whether the State or the  
16 Court adopts the new redistricting plan, it will be transmitted to the Secretary of State on  
17 or before March 25, 2024, so that it will be in effect for the 2024 elections.  
18  
19  
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21 Dated this 10th day of August, 2023.

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