

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

SUSAN SOTO PALMER, ALBERTO MACIAS, BRENDA RODRIGUEZ GARCIA, FABIOLA LOPEZ, CATY PADILLA, EVANGELINA AGUILAR, LIZETTE PARRA, HELIODORA MORFIN, and SOUTHCENTRAL COALITION OF PEOPLE OF COLOR FOR REDISTRICTING

Plaintiffs,

v.

Secretary of State STEVEN HOBBS, in his official capacity as Secretary of State of Washington; LAURIE JINKINS, in her official capacity as Speaker of the Washington State House of Representatives; and ANDY BILLIG, in his official capacity as Majority Leader of the Washington State Senate

Defendants.

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

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Judge: Robert S. Lasnik

Date Action filed: January 19, 2022

Date set for trial:

Noted for: March 25, 2022

ORAL ARGUMENT REQUESTED

INTRODUCTION

Plaintiffs, through undersigned counsel, respectfully move for a preliminary injunction under Fed. R. Civ. P. 65(a) and LCR 7 to enjoin Defendants from using the Washington state legislative plan enacted in HCR 4407 (“Enacted Plan”) and to require Defendants to adopt a state legislative plan that complies with Section 2 of the Voting Rights Act of 1965 (“VRA”), 53 U.S.C. §10300.

Plaintiffs are substantially likely to succeed on their claim that the Enacted Plan discriminates against Latino voters in violation of the VRA. Latino¹ voters in the Yakima Valley region have continuously experienced deprivations of their right to vote due to racial vote dilution. *See, e.g., Montes v. City of Yakima*, 40 F. Supp. 3d 1377 (E.D. Wash. 2014); *Glatt v. City of Pasco*, No. 4:16-CV-05108 (E.D. Wash. Jan. 27, 2017); *Aguilar et al. v. Yakima County et al.*, No. 20-2-0018019 (Kittitas Cty. Sup. Ct. July 13, 2020). High levels of racially polarized voting exist in the region, and Latino voters are sufficiently large, geographically compact, and politically cohesive to elect a preferred candidate to an alternatively-configured state legislative district. *See Thornburgh v. Gingles*, 478 U.S. 30, 50-51 (1986). The totality of the circumstances demonstrate that Latino voters do not have an equal opportunity to participate in the political process. *Id.* at 36-38. The Enacted Plan, however, continues the legacy of vote dilution in the Yakima Valley by drawing Legislative District 15 (“LD 15”) as a *façade* Latino opportunity district that does not provide Latino voters with the ability to elect their candidates of choice.

LD 15 dilutes Latino voting strength in multiple ways: LD 15’s Hispanic citizen voting age population (“HCVAP”) is just barely 50%; Latino voters are grouped with a large number of rural white voters that participate at much higher rates and who vote against Latino-preferred candidates; and the map cracks apart adjacent and cohesive Latino voters in Yakima County, worsening the electoral prospects of Latino-preferred candidates. In addition, by giving the *façade* district an odd number, and thus elections that take place in non-presidential election years, Defendants ensured even lower Latino voter turnout. These tactics, which the U.S. Supreme Court

¹ Plaintiffs use the terms “Latino” and “Hispanic” interchangeably to refer to individuals who self-identify as Latino or Hispanic. Additionally, the terms “Latino” and “Hispanic” mean persons of Hispanic Origin as defined by the United States Census Bureau and U.S. Office of Management and Budget (OMB).

has held violate Section 2, result in a LD 15 that does not provide Latino voters an opportunity to elect their candidate of choice. *See, e.g., LULAC v. Perry*, 548 U.S. 399, 441 (2006).

If preliminary relief is not granted, Latino voters in the Yakima Valley region—including Plaintiffs—will suffer irreparable harm. Plaintiffs will be denied the ability to elect candidates of choice to LD 15 for both the House and Senate elections in 2022 and would not obtain relief until the next election in 2024 (House) or 2026 (Senate), *halfway or more through the decade*. The balancing of harms and the public interest likewise weigh in favor of Plaintiffs’ requested preliminary injunction. Additionally, at the parties’ 26(f) conference on February 24, an attorney for Secretary Hobbs indicated that implementing new districts would be possible if the necessary information was received by the end of March 2022.² This Court should set an expedited hearing, grant Plaintiffs’ motion, and order remedial relief, including a preliminary injunction that (1) enjoins Defendants from using the Enacted Plan, (2) orders Defendants to adopt a plan that complies with the VRA and provides Latino voters an equal opportunity to elect candidates of choice to an even-numbered legislative district in the Yakima Valley area, and (3) extends the candidate filing deadline with respect to the remedial legislative district if necessary.³

FACTUAL BACKGROUND

I. The Latino Population in Washington Has Grown Since 2010 in the Yakima Valley Region and Washington as a Whole.

From 2010 to 2020, the Latino population in the Yakima Valley region and in the State of Washington grew dramatically. Based on the 2020 decennial Census, the Latino population in

² Under Washington law, “[p]recinct boundaries may be altered at any time as long as sufficient time exists prior to a given election for the necessary procedural steps to be honored.” RCW 29A.16.040. The last day that precinct lines can be changed is fourteen days prior to the first day for candidate filing for the primary election; in this case the fourteen days prior to the first day for candidate filing is May 2, 2022. *Id*

³ This motion seeks preliminary relief with respect to only Count I of Plaintiffs’ Complaint, the discriminatory results claim under Section 2.

Washington grew by 303,423 people, or a 40.1% growth rate.⁴ Non-Latinos in the state only had an 11.3% growth rate. *Id.* The state’s Latino population growth is centered in the Yakima Valley region.⁵ The region generally consists of Yakima, Benton, and Franklin Counties, and the municipalities of the City of Yakima, Toppenish, Sunnyside, Grandview, and the Tri-Cities (Pasco, Kennewick, and Richland), among others.

II. The 2021 Redistricting Commission and Legislature Chose to Adopt a Dilutive State Legislative District Map for Latino Voters in the Yakima Valley Region.

Under Washington law, a bipartisan Washington State Redistricting Commission (“Commission”) composed of five members (four of whom are voting members) must be created to redistrict the state’s congressional and state legislative districts following the decennial census. Wash. Const. Art II, § 43.⁶ The Commission’s maps must comply with federal law, including the VRA, as well as the criteria listed in RCW 44.05.090. None of the first four maps proposed by the Commissioners on September 21, 2021, had a HCVAP over 50%. Exs. 1-5 (Commissioners’ Proposed Maps). On September 24, 2021, Commissioner Walkinshaw and his staff released an analysis of all four of these proposed maps to the media. Ex. 6 (Walkinshaw Analysis). The September 24, 2021, analysis stated that “[b]oth Republican Commissioners split Hispanic/Latino community in the Yakima Valley. Neither of them drew a majority-Hispanic district in this region; in fact they managed to split up the only majority-Hispanic district in our current map (15th).” *Id.*

On October 19, 2021, Dr. Matt A. Barreto, UCLA Political Science & Chicana/o Studies Professor and Faculty Director of the UCLA Voting Rights Project, who was hired by the

⁴ U.S. Census Bureau; 2020 Redistricting Data - PL94. Race by Hispanic Status 2020. Washington State.

⁵ U.S. Census Bureau; 2020 Redistricting Data - PL94. Race by Hispanic Status 2020. Benton, Franklin, and Yakima Counties.

⁶ Four members of the Commission are appointed by the legislative leaders of the two largest political parties in each house of the legislature, and the fifth member is selected by an affirmative vote of at least three of the four appointed members. Wash Const. Art II, § 43(2).

Washington Senate Democrats as a consultant on VRA compliance, released an analysis of voting patterns in the Yakima Valley region and of the proposed maps' compliance with the Voting Rights Act. Ex. 8; Ex. 27 (Barreto Dec.). Dr. Barreto's detailed analysis found that Latinos in the Yakima Valley region are sufficiently large and geographically compact to form the majority in a state legislative district and that there is racially polarized voting in the region. Ex. 8 at 17 ("from 2010 to 2020 *every major election* analyzed shows [a] clear pattern of racially polarized voting,"). Dr. Barreto also provided two demonstrative maps showing it is possible to draw a majority-Latino state legislative district in the region that would elect Latino candidates of choice. *Id.* at 22-24. This presentation was available to the Commission while they worked on the legislative map, and the Commissioners in fact reviewed it. Ex 27 at ¶ 9; Ex. 25 (Fain, Corry, Dufault Texts).

On October 25, 2021, Commissioners Sims and Walkinshaw released revised maps for public comment. These maps included a majority-HCVAP LD 14 that would elect Latino candidates of choice, but the maps were not adopted. Ex. 9, 10. In an email to Commissioner Sims about her proposed map, Sims' advisor states that the map "makes the 14th LD the VRA district." Ex. 24 (October 22, 2021 Email Chain). Plaintiff Southcentral Coalition of People of Color for Redistricting submitted a proposed state legislative district map that included a VRA compliant Yakima Valley district. Ex. 23 (Southcentral Redistricting Coalition Email). This map was not adopted. The Commission sent its final state legislative map to the legislature on November 16, 2021. Ex. 11.

On February 8, 2022, the legislature passed HCR 4407, which enacted the Commission's maps with minor boundary amendments. Ex. 12; *see* RCW 44.05.110. LD 15 was not affected by any boundary or population changes. Ex. 12. The candidate filing period for Washington's state

legislative elections begins on May 16, 2022 and ends on May 20, 2022. The 2022 state legislative primary election takes place on August 2, 2022. The general election is November 8, 2022.⁷

LEGAL STANDARD

To succeed on a motion for preliminary injunction, Plaintiffs must show a “likelihood of success on the merits; her likelihood of suffering irreparable harm in the absence of preliminary relief; whether the balance of equities tips in her favor; and whether an injunction is in the public interest.” *Garcia v. City of Los Angeles*, 11 F.4th 1113, 1118 (2021) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). The Ninth Circuit evaluates the above factors on a “sliding scale.” *Short v. Brown*, 893 F. 3d. 671, 675 (2018). Thus, “if a plaintiff can only show that there are serious questions going to the merits—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the balance of hardships tips sharply in the plaintiff’s favor, so long as the Plaintiff also shows there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Feldman v. Arizona Secretary of State’s Office*, 843 F.3d 366, 375 (2016) (citations omitted). Because all of these criteria are met here, the Court should issue an injunction.

ARGUMENT

I. Plaintiffs Are Likely to Succeed on the Merits of Their Section 2 Claim.

Plaintiffs are likely to succeed on their claim that the Enacted Plan violates the VRA by having the effect of unlawfully diluting the power of Latino voters in the Yakima Valley region. Section 2 prohibits any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color” 52 U.S.C. § 10301(a). A violation of Section 2 is established if “the political processes leading to [a]

⁷ See *Dates and Deadlines*, Washington Sect’y of State, <https://www.sos.wa.gov/elections/dates-and-deadlines.aspx>

nomination or election” in the jurisdiction “are not equally open to participation by [a racial minority group] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” *Id.* § 10301(b).⁸

To succeed on a Section 2 claim, Plaintiffs must satisfy the preconditions identified in *Gingles*, including that (1) the minority group is “sufficiently large and geographically compact to constitute a majority in a single-member district”; (2) the minority group is “politically cohesive”; and (3) the majority votes “sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” 478 U.S. at 50-51. The Court then must assess whether, under the totality of the circumstances, members of the minority group have less opportunity to participate in the electoral process and elect candidates of its choice. *Id.* at 77-79; 52 U.S.C. § 10301(b). The U.S. Supreme Court has directed that the list of non-exhaustive factors in the Senate Report on the 1982 amendments to the VRA (“Senate Factors”) be considered for the totality of the circumstances analysis. *Gingles*, 478 U.S. at 35-37. “There is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.” *United States v. Marengo Cty. Comm’n*, 731 F.2d 1546, 1566 n.33 (11th Cir. 1984) (quoting S. Rep. No. 97-417, at 29 (1982)).

These requirements are met here. Latino voters in the Yakima Valley are sufficiently large and geographically compact to be the majority in a state legislative district; Latino voters are politically cohesive and prefer the same candidates for political office; and consistent white bloc voting prevents the election of Latino-preferred candidates. In addition, a review of the totality of the

⁸ It is well established that racial minority voters who constitute a majority in a district, but lack a real opportunity to elect, are entitled to assert Section 2 challenges. *See, e.g., LULAC* 548 U.S. at 428; *Pope v. Cty. of Albany*, 687 F.3d 565, 575 n.8 (2d Cir. 2012) (“[T]he law allows plaintiffs to challenge legislatively created bare majority-minority districts on the ground that they do not present the ‘real electoral opportunity’ protected by Section 2.”) (internal citations omitted); *Kingman Park Civic Ass’n v. Williams*, 348 F.3d 1033, 1041 (D.C. Cir. 2003); *Salas v. Southwest Texas Jr. College Dist.*, 964 F.2d at 1547 (“Unimpeachable authority from our circuit has rejected any *per se* rule that a racial minority that is a majority of a political subdivision cannot experience vote dilution.” (quoting *Monroe v. City of Woodville*, 881 F.2d 1327, 1333 (5th Cir. 1989)); *Missouri State Conference of the Nat’l Ass’n for the Advancement of Colored People v. Ferguson-Florissant Sch. Dist.*, 894 F.3d 924, 933 (8th Cir. 2018).

circumstances demonstrates that Latino voters in the Yakima Valley region have less opportunity than other voters to participate in the political process. Despite these conditions, LD 15 in the Enacted Plan does not provide Latino voters with an opportunity to elect their candidates of choice.

A. The Latino population in the Yakima Valley Region is Sufficiently Large and Geographically Compact to Constitute the Majority in a State Legislative District.

Plaintiffs can readily show that the Latino population in the Yakima Valley is sufficiently large and geographically compact to exceed 50% of the CVAP in a state legislative district. *See Bartlett v. Strickland*, 556 U.S. 1, 19-20 (2009); *see also LULAC*, 548 U.S. at 433 (“The first *Gingles* condition refers to the compactness of the minority population, not the compactness of the contested district.”) (internal quotation marks omitted). Indeed, there can be no dispute that it is possible to create a majority-HCVAP district in the Yakima Valley. The Latino population in the state and region has grown enormously in the past decade and is compactly concentrated. *See Ex. 8 at 2-4*. LD 15 in the Enacted Plan itself contains a bare majority HCVAP. In addition, both Commissioners Sims and Walkinshaw proposed maps that created majority-HCVAP districts in the Yakima Valley. *See Exs. 9, 10*. Dr. Barreto also provided the Commission with two additional majority-HCVAP districts in the region that would elect candidates of choice, as did Plaintiffs and other groups. *See Ex. 8 at 22-23* (containing 60% and 52% HCVAP); *Ex. 27*; *Ex. 23*. Plaintiffs can also provide an additional illustrative redistricting plan to this Court that shows it is possible to draw a majority-HCVAP district that gives Latino an equal opportunity to elect. Altogether, *at least five* maps exist that demonstrate that Latino voters can constitute the majority in a legislative district. This evidence demonstrates that *Gingles* prong 1 has been met here.

B. Latinos in the Yakima Valley Region are Politically Cohesive

To demonstrate that Latinos are politically cohesive, Plaintiffs must show that “a significant number of minority group members usually vote for the same candidates.” *Gingles*,

478 U.S. at 56. This typically requires a statistical analysis of election results to determine the degree of racially polarized voting, but may be established through other, non-statistical evidence. *See, e.g., Luna v. Cty. of Kern*, 291 F. Supp. 3d 1088, 1117 (E.D. Cal. 2018).

Plaintiffs' expert Dr. Loren Collingwood examined the extent of racially polarized voting in the Yakima Valley in eight different election contests from 2016 to 2020. Ex. 26. To conduct this analysis, Dr. Collingwood utilized the widely accepted statistical method of ecological inference to infer aggregate voting behavior by members of different racial groups based on election results and voter demographics. *Id.* at ¶ 11. Ecological inference is routinely accepted as reliable by Courts analyzing claims under the VRA. *See, e.g., Montes*, 40 F. Supp. 3d 1377 (E.D. Wash. 2014); *Luna*, 291 F. Supp. At 1124; *Wright v. Sumter Cty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297, 1305 (M.D. Ga. 2018) (noting that “the EI method is currently the ‘gold standard’ for use in racial bloc voting analyses...”), *aff'd*, No. 18-11510, 2020 WL 6277718 (11th Cir. Oct. 27, 2020); *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 691 (S.D. Tex. 2017).

Dr. Collingwood found that “the results clearly show the presence of racially polarized voting, with Latinos consistently voting at rates often as high as two to one in support of one set of candidates, and non-Hispanic whites supporting a different set of candidates at rates higher than two to one.” Ex. 26 (Collingwood Dec.) at ¶ 13. Dr. Collingwood also found that in four state legislative races involving Latino candidates, “the Latino candidates won a majority of the vote in heavily Latino precincts across [LD 15] but received extremely little support in majority white precincts.” *Id.* at ¶ 14. Additionally, analysis presented to the Commission by Dr. Barreto, demonstrated clear patterns of racial polarization in voting in the Yakima Valley. *See* Ex. 8 at 9-16; Ex. 27 (Barreto Dec.).

Finally, other courts have found that racially polarized voting exists in the region. For example, a federal court found that Latinos in the Yakima area are politically cohesive and that racially polarized voting exists in *Montes v. City of Yakima*, 40 F. Supp. 3d 1377 (E.D. Wash. 2014) (“Plaintiffs have made a strong showing that Latino voters in Yakima have “clear political preferences that are distinct from those of the majority.”). Another federal court also found that racially polarized voting exists in elections in Pasco, Washington. *See Glatt v. City of Pasco*, No. 4:16-CV-05108-LRS, (E.D. Wash. Jan. 27, 2017). A Washington state court approved a settlement finding that the conditions for a violation of the Washington Voting Rights Act, including a showing of racially polarized voting, had been met in Yakima County. *See Aguilar et al. v. Yakima County et al.*, No. 20-2-0018019 (Kittitas Cty. Sup. Ct. July 13, 2020).

C. White Bloc Voting Occurs in the Region and Will Defeat Latino-Preferred Candidates.

White voters in the region vote as a bloc usually to defeat Latino-preferred candidates for state legislative districts and other offices. In addition, as drawn in the Enacted Plan, white voters in LD 15 will vote sufficiently as a bloc and usually defeat minority preferred candidates. Under the third *Gingles* prong, the court inquires “whether the majority can usually overcome the political cohesiveness of the minority group.” *Montes*, 40 F. Supp. 3d at 1405. Majority bloc voting is proven with historical election data. *Gingles*, 478 U.S. at 46.

First, no Latino candidate has *ever* been elected to the Washington legislature from the Yakima Valley region, despite numerous candidates running for seats. This “is powerful evidence that non-Latino majority will ‘usually’ defeat the Latino minority’s preferred candidate.” *Montes*, 40 F. Supp. 3d at 1405. Further, in conducting his racially polarized voting analysis, Dr. Collingwood also examined the levels of white bloc voting in eight statewide elections, and four legislative elections Ex. 26 at ¶ 14. Overall, Dr. Collingwood found that of the eight statewide

elections he analyzed, *seven out of eight* demonstrated white bloc voting, as did all four legislative elections. *Id.* at ¶ 14, 16. In these elections, white voters voted at high levels for the same candidate, and never for the Latino-preferred candidate. *Id.* Thus, Plaintiffs have established both *Gingles* prongs 2 and 3, *i.e.* high levels of racially polarized voting in the Yakima Valley region.

Given the satisfaction of *Gingles* prong 1 as well, Plaintiffs have shown a strong likelihood of success on the merits. Indeed, “It will only be the very unusual case in which the plaintiff can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under a totality of the circumstances.” *See, e.g., Georgia State Conference of the NAACP v. Fayette Cty. Bd. of Comm’rs*, 775 F.3d 1336, 1342 (2015).

D. LD 15 in the Enacted Plan Does Not Provide Latino Voters An Equal Opportunity to Elect Candidates of Their Choice.

Although all three *Gingles* preconditions are present in the Yakima Valley region, including the ability to draw a majority-Latino legislative district, high levels of racially polarized voting, and consistent white bloc voting, LD 15 in the Enacted Plan does not provide Latino voters with an equal opportunity to elect candidates of their choice, in violation of the VRA.

LD 15 in the Enacted Plan was drawn to contain a *bare* Latino majority population, at best.⁹ However, it was not drawn to perform for Latino voters, given local election conditions and turnout factors. For example, the enacted district was assigned an odd number, LD 15, instead of 14. But elections in odd-numbered districts are held in non-presidential years, Wash. Const. Art II, § 6, and Latino turnout is lower in non-presidential election years. Ex. 27 at ¶12. The Commission was presented with alternative versions of a Latino-majority district in the area that

⁹ Plaintiffs uploaded the shapefile provided by the Commission for the Final Enacted Legislative District Map to Dave’s Redistricting, a widely-used mapping platform, to view LD 15’s demographics. According to Dave’s, LD 15 has a 50.0% HCVAP percentage. This map is available here: <https://davesredistricting.org/maps#viewmap::45bd8e19-f2b2-4063-8418-498a44509e06>

would perform, including from Commissioners themselves and Plaintiffs and other residents, but instead selected a configuration of LD 15 that did not perform. Exs. 8-10, 23, 27.

Plaintiffs' expert Dr. Collingwood conducted analyses confirming that LD 15 in the Enacted Plan indeed does not provide Latino voters with an opportunity to elect a candidate of choice to the state legislature. Dr. Collingwood ran a performance analysis of eight recent past statewide elections in Washington and examined how candidates would perform in the new LD 15 and LD 14 in Plaintiffs' demonstrative map. *Id.* at ¶ 13. Dr. Collingwood's analysis demonstrates that LD 15 does not allow Latino voters an opportunity to elect candidates of choice, as *white-preferred candidates win seven out of eight elections under the enacted LD 15. Id.* The high level of bloc voting present in LD 15 makes it even harder for Latino voters to elect a candidate of choice. *Id.* at ¶ 16-18. In Plaintiffs' demonstrative LD 14, Latino voters' preferred candidate would win in eight of eight elections. *Id.* at ¶¶ 15-16.

This evidence demonstrates that that LD 15 as enacted does not provide an equal opportunity to elect, and that "under another configuration minority voters ha[ve] better electoral prospects." *LULAC*, 548 U.S. at 495; *Gingles*, 478 U.S. at 99.

E. The Totality of the Circumstances Demonstrates that the Electoral Process for is Not Equally Open to Participation by Latino Voters.

The totality of the circumstances demonstrates that Latino voters have less opportunity than other members of the electorate to participate in the political process and to elect representatives of choice. *See* 52 U.S.C. § 10301(b). The nine Senate Factors used to examine the totality of the circumstances confirm the Section 2 violation here.¹⁰

¹⁰ The Senate Factors include: (1) the history of official voting-related discrimination in the state or political subdivision that touched the right of the members of the minority group to register, vote, or otherwise participate in the democratic process; (2) the extent of racially polarized voting in the jurisdiction; (3) practices that 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

Senate Factor 1: Official Voting Discrimination. There is a history of official voting-related discrimination in the Yakima Valley. Two of the region’s two largest cities, Yakima and Pasco, have both been found liable for maintaining election systems that dilute the electoral power of Latino voters in violation of Section 2. *See* 40 F. Supp. 3d at 1377; *Glatt v. City of Pasco*, No. 4:16-CV-05108 (E.D. Wash. Jan. 27, 2017). In *Montes*, the Eastern District of Washington found the at-large system used to elect the Yakima City Council “not equally open to participation by Latino voters” and had a dilutive effect . . . on Latino votes” enabling the non-Latino majority in Yakima [to] routinely suffocate[] the voting preferences of the Latino minority.” 40 F. Supp. 3d at 1385, 1407. Latino voters also sued Yakima and Franklin Counties under the Washington Voting Rights Act for maintaining discriminatory at-large election systems. *See Aguilar et al. v. Yakima County et al.*, No. 20-2-0018019 (Kittitas Cty. Sup. Ct. July 13, 2020); *Portugal et al. v. Franklin County et al.*, No. 21-2-50210-11 (Franklin Cty. Sup. Ct. May 5, 2021). In December 2021, the state court in *Aguilar* found, and the parties agreed, that there was ample evidence that Yakima County’s at-large election system for its Board of Commissioners denied Latino voters an equal opportunity to elect candidates of their choice. *Id.* The parties agreed to a settlement, leading to the creation of a majority-Latino district for Board of Commissioner elections. *Id.*

Further, official voting-related discrimination against Latino voters in the Yakima Valley stretches back decades. In 2004, Yakima County entered into a consent decree with the U.S. Department of Justice after being sued for failing to provide Spanish-language voting materials and voter assistance as required by Section 203 of the federal Voting Rights Act. *See U.S. v.*

minority group in the state bear the effects of discrimination in such areas as education, employment, and health, which hinder their ability to participate effectively in the political process; (6) the use of overt or subtle racial appeals in political campaigns; (7) the extent to which minorities have been elected to public office in the jurisdiction; (8) a lack of responsiveness on the part of elected officials to the needs of the minority group; and (9) the tenuous nature of the policy underlying the law being challenged. *Id.* at 36-37.

Yakima County, No. 04-cv-3072 (E.D. Wash. Sept. 3, 2004). Further, for several years after the passage of the Voting Rights Act of 1965 and despite directives to end the discriminatory practice from the state attorney general, Yakima County continued to administer literacy tests to Latino voters. *Montes*, 40 F. Supp. 3d at 1409; *Oregon v. Mitchell*, 400 U.S. 112 (1970).

Senate Factor 2: Racially Polarized Voting. As described in Sections B and C, *supra*, elections in the Yakima Valley region feature high levels of racially polarized voting. *See, e.g.*, Exs. 8, 26, 27. Thus, this Factor weighs heavily in Plaintiffs' favor.

Senate Factor 4: Practices That Enhance Discrimination. As applied here, the practice of staggering the election of state legislative districts in presidential and non-presidential election years enhances the opportunity for vote dilution against Latino voters in the Yakima Valley region. In Washington state legislative elections, even-numbered districts are up for election in presidential election years. Wash. Const. Art II, § 6. Conversely, odd-numbered legislative districts are up for election in non-presidential election years, where voter turnout is lower. Wash. Const. Art II, § 6; Ex. 27. Since the *façade* LD 15 is odd-numbered, it is up for election in non-presidential election years, where Latino voter turnout in particular is lower, increasing the difficulty of electing candidates of choice. *Id.* This enhances the opportunity for Latino vote dilution, but could be remedied by renumbering the majority-HCVAP legislative district to an even number.

Senate Factor 5: Effects of Past Discrimination. Latino voters in the Yakima Valley region also bear the effects of discrimination in employment, education, health, and other areas of life, hindering their ability to participate effectively in the political process. As an initial matter, racial animus has long been a fact of life for Latinos in the Yakima Valley. According to a report from Dr. Luis Fraga in the *Montes* case, “[t]he Yakima Valley has a long history of racial animus and hostile responses by Whites to minority groups seeking to gain more power or better position.”

Ex. 17. A 2015 report by the Yakima Herald-Republic explained that the “cultural conflict” between Latino and white communities in Yakima is “apparent in public where Latinos and non-Latinos gather at different parks and many businesses, and on the Internet, where forums and comment boards for local audiences can often be loaded with xenophobic vitriol.”¹¹ One recent example of the continuing racial tension in the Yakima Valley is outlined in the federal lawsuit brought by the Selah Alliance for Equality against the City of Selah, regarding the City’s removal of signs promoting racial equality and protesting city policies. *See Selah Alliance for Equality v. City of Selah*, 1:20-cv-03228, ECF No. 1 (Complaint) (E.D. Wash. 2020).

The lingering effects of past discrimination are also apparent from clear and significant socioeconomic disparities between Latino and white voters in the Yakima Valley. *See* Ex. 28 (Table 1, Socioeconomic Disparities). According to the most recent U.S. Census Bureau’s ACS 5-Year Estimates, Latinos in Yakima, Benton, and Franklin Counties have significantly higher rates of poverty and unemployment than white residents—in Benton and Franklin Counties the rate of poverty for Latinos is at least *triple* that of white residents. *Id.*¹² The Latino unemployment rate is almost double the white unemployment rate in Yakima and Franklin Counties. *Id.* Latinos in all three counties also face disparities in comparison to whites in median household income. *Id.*

Latinos in the Yakima Valley are also less likely to have either a high school diploma or college degree than white residents. Over half—51.6%—of the Latino population over the age of

¹¹ *See* Mike Faulk, *Yakima’s Cultural Divide*, Yakima Herald (Oct. 16, 2015) https://www.yakimaherald.com/news/elections/yakima_city_council/yakimas-cultural-divide/article_590c92b4-7416-11e5-949e-dbf62c94960.html.

¹² In assessing this factor, courts routinely analyze data from the U.S. Census Bureau, namely American Community Survey (“ACS”) estimates, relating to socioeconomic indicators. *See, e.g., Montes*, 40 F. Supp. 3d at 1413; *Luna*, 291 F. Supp. 3d at 1137. Further, the census data meet the requirements of Fed R. Evid. 201(b) in that they are “not subject to reasonable dispute” because they are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” *See, e.g., United States v. Esquivel*, 88 F.3d 722, 727 (9th Cir. 1996) (taking judicial notice of 1990 census data showing the number of Hispanic individuals eligible for jury service).

25 in Yakima County does not have a high school diploma or its equivalent, compared to only 9.6% of white residents. *Id.* This trend continues for higher education, where only 5.7% of the County's Latino residents over the age of 25 have a bachelor's degree, compared to 24.1% of white residents. *Id.* The educational disparities are as stark in Benton and Franklin Counties.

Latinos in the region also bear the effects of past discrimination with respect to health and healthcare access. In Yakima County, 19.6% of Latinos do not have health insurance compared to only 5.9% of white residents. *Id.* Similarly, the Latino uninsured rate in Benton and Franklin Counties is more than three times the white uninsured rate. *Id.* Latinos in the Lower Yakima Valley are also disproportionately impacted by other serious health issues like water contamination, including high nitrate levels and fecal matter in wells.¹³

Latinos in the Yakima Valley bear the impacts of discriminatory policing. On February 10, 2015, local Pasco police, themselves not racially reflective of the community, shot Antonio Zambrano-Montes seventeen times and killed him after he was allegedly throwing rocks at cars. Weeks of demonstrations calling for justice and more scrutiny over Pasco's policing of the Latino community followed. Ex. 14. In housing, Latino residents of Yakima County face major disadvantages compared to white residents. A report prepared by the Homeless Network of Yakima County found that "Hispanics are twice as likely as non-Hispanics to be denied financing when applying for conventional loans to purchase housing and to obtain refinancing of existing mortgages thereby limiting their housing choices." Ex. 15 at 84.

Latinos in the Yakima Valley also face other barriers to participating in the political process. Voter registration and turnout levels are substantially lower among Latino residents than white residents. January 2021 data provided by the Yakima County Elections Office shows there

¹³ Wash. Dept. of Ecology, *Lower Yakima Valley Groundwater Management Area*, <https://ecology.wa.gov/Water-Shorelines/Water-quality/Groundwater/Protecting-aquifers/Lower-Yakima-Valley-groundwater>.

are 127,512 registered voters countywide, but only 35,150 of those are “Spanish surnamed registered voters.” Ex 16. Statistics collected by the Yakima County Auditor show that for the 2020 general election, ballots were issued to 37,978 voters with a Spanish surname, but only 21,281 (56%) of those ballots were returned. By comparison, of the 89,713 ballots issued to voters with a non-Spanish surname, 75,704 (84%) of those ballots were returned.¹⁴ In Eastern Washington, including Yakima and Franklin Counties, Latino voters have their ballots challenged and rejected at much higher rates than white voters (around 7.5 times and 3.9 times higher, respectively).¹⁵

Senate Factor 6: Racial Appeals in Campaigns. Political campaigns in the Yakima Valley are also marked by overt and subtle racial appeals. In 2014, when Plaintiff Soto Palmer campaigned on behalf of Gabriel Muñoz, a Latino candidate for State Senate in Legislative District 15, she knocked on doors in the predominantly white town of Union Gap. At one home, a white resident who saw the campaign literature for Mr. Muñoz immediately said: “I’m not gonna vote for him, I’m racist.” Ex. 18 (Soto Palmer Dec). Plaintiff Aguilar also encountered racial appeals during her re-election campaign for the Sunnyside City Council, when a local businessman distributed hate mail that expressed racial animus against the Latino community. Ex. 19 (Aguilar Dec). In a campaign for a seat on the Yakima City Council, Latina candidate Dulce Gutierrez was told by a white resident to “Go back to Mexico” while she was handing out campaign flyers, and had another individual ask her why they “had to vote for a Mexican” while she was campaigning.¹⁶

¹⁴ 2020 General Election Voter Participation by Surname, Yakima County, <https://www.yakimacounty.us/ArchiveCenter/ViewFile/Item/1130> (last visited Dec. 9, 2021).

¹⁵ See Joy Borkholder, *Investigation Finds Latino Ballots in WA More Likely to Be Rejected*, CROSSCUT (Feb. 15, 2021), <https://crosscut.com/politics/2021/02/investigation-finds-latino-ballots-wa-more-likely-be-rejected>; In May 2021, an individual Latino voter, along with the Latino Community Fund and League of United Latin American Citizens, filed suit in federal court against these counties alleging that the system for verifying ballot signatures discriminate against Latino voters. See, e.g., *Reyes v. Chilton*, No. 4:21-cv-05075 (E.D. Wash. 2021).

¹⁶ Dionne Searcey & Robert Gebeloff, *The Divide in Yakima is the Divide in America*, N.Y. Times (Nov. 19, 2019), <https://www.nytimes.com/2019/11/19/us/politics/yakima-washington-racial-differences-2020-elections.html>.

Latino Republican candidates also face racist incidents while campaigning for office in the Yakima Valley. Jose Trevino, the Republican Mayor of Granger—a city in the Lower Yakima Valley with an 88.4% Latino population—experienced multiple incidents while campaigning for various offices. Mr. Trevino attributed his 2015 loss in the Granger mayoral race to a rumor spread during the campaign that he “was going to fire all the white people in the city.” Ex. 30 (Trevino Dep.). Mr. Trevino also attributed his loss in the 2014 countywide race for Yakima County Clerk, 2018 countywide race for Yakima County Commissioner District 3, and his pulling out of the 2020 appointment process for a vacant Yakima County Board seat to negative coverage in the Yakima Herald-Republic. *Id.* at 72:22-73:12; 86:1-12; 87:3-88:21. He commented that his opponents in those races, almost all of whom were white, did not receive similar treatment, and that he was the “only [candidate] they picked on” because “it was easier to pick on the Republican Mexican than anyone else.” *Id.* at 88:16-21; 100:7-101:4.

Elected officials in the Yakima Valley make overt and subtle racial appeals while in office. For example, Jim Honeyford, the white incumbent state senator in Legislative District 15, twice referred to Latinos and other people of color as “coloreds” and during a legislative hearing said that they are likely to “commit more crimes.”¹⁷ During a September 21, 2021, Franklin County Commissioners’ meeting, Commissioner Mullen stated, in reference to the discussion of Latino citizen voting age population in the current commissioner districts, that he “believes that there are non-citizens that are voting in the elections.” *See* Franklin County Commissioners Meeting (Sept. 21, 2021), <https://media.avcaptureall.cloud/meeting/e3e60dfb-87e0-4b8f-bb49-14dbe5167045> at

¹⁷ *Sen. Honeyford sorry for calling minorities ‘coloreds,’* The Columbian (Mar. 6, 2015), <https://www.columbian.com/news/2015/mar/06/sen-honeyford-sorry-calling-minorities-coloreds/>; Ansel Herz, *Republican State Senator: Poor, “Colored” People Are More Likely to Commit Crimes*, The Stranger (Mar. 2, 2015), <https://www.thestranger.com/blogs/slog/2015/03/02/21799665/washington-republican-poor-colored-people-are-more-likely-to-commit-crimes>.

1:12:00-1:12:30. Similarly, in 2016 at the start of his campaign for a seat on the Yakima County Board of Commissioners, Ron Anderson shared a Facebook post stating that “Illegals are being seduced into America by Democrats to steal our elections. Act of Treason, Arrest all involved!” *See, e.g., Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976, 1041 (D.S.D. 2004) (finding racial appeals based on news articles focusing on allegations of voter fraud by Native American residents). Ex. 29 (Anderson Dep. at 145:2-146:5). In 2016, a Franklin County official shared an image of a white farmer with the caption, “When is white history month?” and on the corner of the image, there was a white raised fist used by white supremacists with the words “100% White, 100% Proud.” Ex. 21.

Senate Factor 7: Extent of Minority Elected Officials. Few Latino candidates have been elected to public office in the Yakima Valley region with the exception of hyperlocal offices in areas with high majority Latino CVAP. Although several Latino candidates have run for election in Legislative District 15 in the last decade, including at least Pablo Gonzalez, Teodora Martinez-Chavez, and Bengie Aguilar, none have won. Legislative District 15 is currently represented by two white men in the state house, Bruce Chandler and Jeremie Dufault, and a white man in the state senate, Jim Honeyford.¹⁸ Legislative District 14 is currently represented by two white representatives in the state house, Chris Corry and Gina Mosbrucker, and a white man in the state senate, Curtis King.¹⁹

Latino voters lack representation at the county level in the Yakima Valley region. Only one Latino candidate, Jesse Palacios, has *ever* been elected to the Yakima County Board of Commissioners, and that was 20 years ago, in 2002. Ex. 19. No Latino-preferred candidates have been elected to the Franklin County Board of Commissioners. Ex. 22.

¹⁸ *State District 15 Legislators*, <https://app.leg.wa.gov/districtfinder/displaydistrict/15>. (last visited February 25, 2022.)

¹⁹ *See State District 14 Legislators*, <https://app.leg.wa.gov/districtfinder/displaydistrict/14>. (last visited February 25, 2022.)

Proportionality. An additional factor courts consider 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.” *LULAC*, 548 U.S. at 426. Latino residents make up 7.3% of the state’s CVAP according to the latest 5-year ACS data, but Latinos form an effective majority of voters in *none* of the Washington Legislative Districts and a bare majority in only one district, or 2% of the 49 districts. Therefore, the number of districts in which Latinos form a majority of voters is less than Latinos’ share of Washington state’s CVAP. This lack of proportionality is indicative of Latino voters’ lesser opportunity to participate in the political process. *See Johnson v. De Grandy*, 512 U.S. 997, 1000 (1994).

In sum, because Plaintiffs satisfy all three *Gingles* prongs and the totality of the circumstances analysis weighs in their favor, Plaintiffs have shown a strong likelihood of success on the merits. Thus, this Court should enjoin the use of the state legislative map in order to remedy the Latino vote dilution in LD 15.

II. Permitting an Election to Move Forward Under the Enacted Plan Constitutes Irreparable Injury That Justifies a Preliminary Injunction

Plaintiffs will be irreparably harmed absent an injunction preventing Defendants from holding elections for LD 15 under a map that dilutes Latino voting strength. Irreparable harm is “harm for which there is no adequate legal remedy.” *Nat’l Ass’n of Manufacturers v. United States Dep’t of Homeland Sec.*, 491 F. Supp. 3d 549, 569 (N.D. Cal. 2020), *appeal dismissed sub nom. Nat’l Ass’n of Manufacturers v. U.S. Dep’t of Homeland Sec.*, 20-17132, 2021 WL 1652546 (9th Cir. Apr. 8, 2021). State actions infringing on voting rights constitute irreparable injury. *Fayette County Ga. State Conf. of the N.A.A.C.P. v. Fayette Cty. Bd. of Com’rs*, 118 F. Supp. 3d 1338, 1347–18 (N.D. Ga. 2015); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir.2012); *United States v. City of Cambridge*, 799 F.2d 137, 140 (4th Cir. 1986) (holding that discriminatory voting procedures

“constitute the kind of serious violation of the Constitution and the Voting Rights Act for which courts have granted immediate relief.”); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir.1986).

Absent a preliminary injunction, the 2022 election will go forward under the Enacted Plan, thus denying Latino voters in the Yakima Valley area the ability to participate equally in elections to the state legislature. Every election that continues under an illegal map is one that harms Plaintiffs, and there is a legacy of vote dilution against Latinos in the Yakima Valley region. *See Garza v. Cty. of Los Angeles*, 918 F.2d 763, 772 (9th Cir. 1990) (finding that Latinos in Los Angeles County suffered an injury of vote dilution that “has been getting progressively worse, because each election has deprived Hispanics of more and more of the power accumulated through increased population.”); *League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (“[O]nce the election occurs, there can be no do-over and no redress.”). This is especially so because if the use of LD 15 is not enjoined before the 2022 election, Latino voters will have to wait until 2024 (House) and 2026 (Senate) to have an equal opportunity to elect a candidate of choice to the legislature, compounding the harm for *over half of the decade*.

The right “to vote freely for the candidate of one’s choice is of the essence of a democratic society and any restrictions on that right strike at the heart of representative government.” *Reynolds v. Sims*, 377 U.S. 533,555 (1964); *see Williams v. Rhodes*, 393 U.S. 23, 30 (1968) (“[T]he right of qualified voters ... to cast their votes effectively ... rank[s] among our most precious freedoms.”); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (the right to vote is “preservative of all rights”). The dilution of Latino voters’ voting strength constitutes irreparable harm and must be remedied.

III. The Balance of Equities Weigh in Favor of Granting a Preliminary Injunction

The balance of the equities favors Plaintiffs. When weighing the equities, “courts must balance the competing claims of injury and must consider the effect on each party of the granting

or withholding of the requested relief.” *Disney Enter., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 866 (9th Cir. 2017). The irreparable harm that Plaintiffs will suffer, including the deprivation of their right to vote free from vote dilution, outweighs any harm Defendants will suffer if the requested injunction is granted. *See, e.g., Fayette*, 118 F. Supp. 3d 1338, 1348 (N.D. Ga. 2015) (“[T]he harm [Plaintiffs] would suffer by way of vote dilution outweighs the harm” or administrative inconveniences to Defendants). Further, the length of the irreparable injury to Plaintiffs absent relief from this Court highlights the hardship on Plaintiffs’ voting strength.

Defendants may argue that the burden of changing election deadlines is too great. But there can be “no harm from the state’s nonenforcement of invalid legislation.” *United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012). Even if this Court were to be concerned because of the timing of the election, Plaintiffs’ requested injunction does not occur on the “eve” of an election. *Feldman v. Arizona Secretary of State’s Office*, 843 F.3d 366, 419 (2016). The first event of the 2020 primary election, the start of the candidate filing period, is on May 16, 2022. The 2022 primary election is not until August 2, 2022. The November election is around *eight months* away. Plaintiffs are asking for limited changes to the map and it is possible for the state to remedy the VRA violation before the candidate filing window even opens on May 16. As noted *supra*, a number of legal alternatives already exist. In addition, at the parties’ 26(f) conference on February 24, an attorney for Secretary Hobbs indicated that implementing new districts would be possible if the necessary information was received by the end of March 2022.

Further, if necessary, the candidate filing deadline could be delayed without impacting the date of the primary or general elections. *See Wright*, 979 F.3d at 1286 (affirming a remedial order that changed election dates); *United States v. Dallas Cty. Comm’n*, 850 F.2d 1433, 1437 (11th Cir. 1988) (delaying qualification period until entry of a remedial plan). Moreover, “[w]hen federal

law is at issue and the public interest is involved, a federal court's equitable powers assume an even broader and more flexible character than when only a private controversy is at stake." *Kansas v. Nebraska*, 574 U.S. 445, 456 (2015). These principles apply in redistricting cases, where the Court "must undertake an equitable weighing process to select a fitting remedy for the legal violations it has identified, taking account of what is necessary, what is fair, and what is workable." *North Carolina v. Covington*, 137 S. Ct. 1625, 1625 (2017) (internal quotation marks and citation omitted). Thus, upon finding of a violation, this court can set an alternative candidate qualifying period for LD 15 and any potentially effected state legislative district.

IV. The Granting of a Preliminary Injunction is in the Public Interest

The granting of Plaintiffs' requested injunction is in the public's interest. In granting a preliminary injunction, the court must "pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Disney Enter., Inc.*, 869 F.3d at 867. Washington's public includes the tens of thousands of Latino voters whose voting rights would be diluted by an election conducted under LD 15 in the Enacted Plan. And the State's "[f]rustration of federal statutes and prerogatives are not in the public interest." *See, e.g., United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012). The public interest favors remedying racial vote dilution and allowing Washington voters to have an equal opportunity to participate in state legislative elections, no matter their race.

CONCLUSION

LD 15 in the Enacted Plan dilutes the voting strength of Latino voters in the Yakima Valley in violation of Section 2. However, it is possible to draw a majority-HCVAP legislative district in the region that provides Latino voters an equal opportunity to elect candidates of their choice. Plaintiffs are likely to succeed on the merits of their discriminatory results claim, as they are able

to demonstrate all three *Gingles* preconditions and the totality of the circumstances weighs in Plaintiffs' favor. Plaintiffs will suffer irreparable harm if the 2022 elections occur under a map that dilutes Latino voting strength. Further, Plaintiffs' harm will be compounded because, if preliminary relief is not granted, Latino voters would have to wait almost halfway through the decade to elect a candidate of choice to the state legislature. The balance of the hardships weighs in Plaintiffs' favor, and far outweighs any burden on Defendants.

Plaintiffs respectfully request that this Court grant their motion, and (1) preliminarily enjoin Defendants' use of the Enacted Plan, (2) order Defendants to adopt a plan that complies with the VRA and provides Latino voters an equal opportunity to elect candidates of choice to LD 15, and (3) extend the candidate filing deadline with respect to LD 15, if necessary.

Dated: February 25, 2022

Respectfully submitted,

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 25th day of February, 2022 via the Court's CM/ECF system.

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