No. 25-918

In the
Supreme Court of the United States

JOSE TREVINO, *ET AL.*,

Petitioners,

v.

STEVEN HOBBS, SECRETARY OF STATE OF WASHINGTON, *ET AL.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS SUSAN SOTO PALMER, *ET AL.*

Chad W. Dunn
Sonni Waknin
UCLA Voting Rights Project
3250 Public Affairs Bldg.
Los Angeles, CA 90095

Thomas A. Saenz
Ernest Herrera
Mexican American Legal Defense and Education Fund
643 S. Spring St., 11th Fl.
Los Angeles, CA 90014

Edwardo Morfin
Morfin Law Firm PLLC
2062 N. Proctor St., Ste. 205
Tacoma, WA 98407

Mark P. Gaber
Counsel of Record
Simone Leeper
Aseem Mulji
Benjamin Phillips
Isaac DeSanto
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005
(202) 736-2000
mgaber@campaignlegal.org

Annabelle E. Harless
Campaign Legal Center
55 W. Monroe St., Ste. 1925
Chicago, IL 60603

Counsel for Respondents Susan Soto Palmer, et al.

QUESTIONS PRESENTED

1. Whether an individual voter who was granted only permissive intervention below, has no role in implementing state elections, and has not established harm, traceability, or redressability to the lower court's liability decision or remedial decision on the basis of vote dilution, lacks standing to appeal.

2. Whether a candidate who does not reside in or represent the district at issue, was granted only permissive intervention below, has no role in implementing state elections and does not challenge the counting of votes in his election, who was only helped and not harmed in any way by his new district, and who cannot establish traceability or redressability to the lower court's liability or remedial decisions, has standing to appeal.

3. Where Intervenors forfeited their racial gerrymandering claim against the remedial map below, race was not considered at all in the drawing of the map, and the district court's selection of the map was not driven by race such that race could not predominate, does the map trigger strict scrutiny under the Equal Protection Clause.

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INTRODUCTION

The Petition does not warrant review. After the district court found Washington's Legislative District 15 ("LD15") violated § 2 of the Voting Rights Act and ordered a remedial map to replace it, neither the State of Washington nor the Secretary of State charged with administering legislative districts chose to appeal. Only Petitioners ("Intervenors")—two citizens granted only permissive intervention below because they lacked any legally protectable interest in the suit—seek this Court's review. But their Petition suffers from fatal foundational defects and is a poor vehicle for this Court's consideration. Intervenors lack standing to appeal all but their second question presented, and this Court should not reach that question because Intervenors forfeited it below.

First, Intervenors ask this Court to reconsider their standing to appeal the district court's § 2 liability decision and the remedial decision, on the alleged basis of vote dilution in the remedial map. But Intervenors—who lacked standing from the moment they intervened in this case—had the burden to prove a concrete, personal injury traceable to and redressable by those decisions. Applying settled law in line with this Court's precedent, the Ninth Circuit found they could not. Intervenors can show no injury-in-fact, nor sufficiently link any alleged harm to the lower court's decisions. This includes Rep. Ybarra, who lacks standing as a candidate to challenge decisions that did not disadvantage him in any way, especially since all his elections since the liability decision have been uncontested. At bottom, Intervenors ask this Court to hold that their mere disagreement with the lower court's decisions is

sufficient grounds to establish standing to appeal. But this Court's firmly established precedent has already decided the answer to that question is no.

Intervenors then seek reconsideration of their "claim" that the remedial map violates the Equal Protection Clause. This Court should decline review because Intervenors failed to ever raise it in the district court and thus forfeited it. Ignoring their waiver, Intervenors ask this Court to abandon the longstanding requirement that a plaintiff challenging a redistricting plan as a racial gerrymander must prove that race predominated in its design. But this Court need not revisit what triggers strict scrutiny in redistricting to deny review. The remedial map plainly cleared predominance—or any other threshold—because it was drawn without any consideration of race and selected by the district court based on traditional redistricting factors alone.

Finally, this case is a poor vehicle for either question given its bizarre posture and Intervenors' shifting, contradictory positions. Intervenors entered this litigation purportedly to *defend* LD15's enacted boundaries but remarkably now claim that LD15 was in fact illegal all along. A liability decision striking down a district that Intervenors themselves call unlawful and replacing it with a map drawn without consideration of race is the *relief* they request, not an injury—and moots any live claims. Moreover, as their own counsel has acknowledged, Intervenors' involvement in this litigation is solely to pursue their partisan preferences in LD15, which disproves standing and attempts a transparent end-run around this Court's precedent. The petition should be denied.

STATEMENT OF THE CASE

I. Washington convenes a redistricting commission.

Washington assigns state legislative redistricting to a bipartisan Commission, with legislative leaders appointing four voting Commissioners, who then select a non-voting Chair. Wash. Const. art. II, §§ 43(1), (2). At least three voting Commissioners must approve a redistricting plan by November 15 of the redistricting year. *Id.* §§ 43(2), (6). The Legislature can enact minor amendments by two-thirds vote, after which (amended or not) the plan becomes law. *Id.*; RCW 44.05.100.

The state constitution requires that districts contain substantially equal population and, to the extent reasonable, be contiguous, compact, and follow natural, artificial, or political-subdivision boundaries. Wash. Const. art. II, § 43(5). State law further directs that districts, insofar as practical, respect "areas recognized as communities of interest"; minimize county and municipal splits; comprise convenient, contiguous, and compact territory; and avoid precinct splits. RCW 44.05.090(2). No redistricting plan may be drawn "purposely to favor or discriminate against any political party or group." Wash. Const. art. II, § 43(5); RCW 44.05.090(5).

In 2021, Washington convened a Commission whose voting members included Democratic appointees April Sims and Brady Walkinshaw and

Republican appointees Paul Graves and Joe Fain. Doc.191 ¶¶ 70-71.[1]

II. Latino voters challenge LD15 under § 2.

During the redistricting process, every Commissioner received a statistical analysis that analyzed the *Gingles* preconditions in the Yakima Valley area and identified the Latino-preferred candidate in a dozen recent elections, to aid the Commissioners in drawing a district affording Latino voters an equal opportunity to elect their candidates of choice. Doc.208 at 620:2-23; Ex.214.

Consistent with the analysis, all four voting Commissioners traded proposals for a district in the Yakima Valley that would allow an equal opportunity to elect Latino-preferred candidates. Ex.1 at 28. But as negotiations progressed, they gave Commissioner Graves free rein, and he and his staff dismantled the very opportunity district he had earlier proposed. Doc.209 at 790:15-20, 791:7-16. In successive iterations, he removed heavily Latino cities and surgically excised pockets of Latino voters ensuring the district the Commission finally adopted retained a bare majority Hispanic citizen voting age population (HCVAP) of 50.02% but would no longer elect Latino-preferred candidates.[2] Ex.487; Ex.1 at 28. The Commission also numbered the district "15" rather than "14," placing state senate elections in off-years, when the Latino-white turnout gap is widest. Ex.1 at

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[1] Lower court docket items are cited as "Doc.[#]"; trial exhibits are cited as "Ex.[#]."

[2] Petitioners incorrectly assert (at 6) that LD15's HCVAP was 52.6%. According to the estimates the Commissioners used during the redistricting process, LD15's HCVAP was 50.02%. Doc.191 ¶ 97.

29-32. After the Commission adopted the plan, the Legislature approved it with immaterial changes. Doc.191 ¶¶ 82-84.

In January 2022, Plaintiffs sued to challenge LD15 under § 2, alleging that it dilutes Latino electoral opportunity and was drawn with intent to do so behind the *façade* of an opportunity district. Defendants included Secretary of State Steven Hobbs (who took no position on the merits), state legislative leaders (since dismissed), and the State of Washington (later joined to defend the map).

III. Intervenors enter the case to defend LD15 while their counsel litigates to invalidate it.

In March 2022, state representative Drew Stokesbary moved to intervene on behalf of Intervenors to defend LD15. App.225. Mr. Trevino is a Yakima Valley voter; Rep. Ybarra represents LD13, a different district altogether. The district court allowed permissive intervention but denied intervention as of right, finding that both lacked a protectable interest in LD15's boundaries and had identified no "direct and concrete injury" likely to result if the § 2 claim succeeded. App.90.[3]

Their intervention was just one strand of a tangled partisan web of connections concerning LD15. Two weeks earlier, Rep. Stokesbary—who had himself voted to enact LD15—filed a separate suit on behalf of Benancio Garcia III to *challenge* LD15 as a racial gerrymander under the Fourteenth Amendment. App.199-244. But the record revealed that

[3] The same applied to a third intervenor, who did not defend his standing at the Ninth Circuit and is not party to this appeal. App.15.

Commissioner Graves—who drew LD15—was himself involved in creating that challenge for partisan ends: he recruited Garcia as a plaintiff and raised funds for the suit, all while disavowing that LD15 was a racial gerrymander. Supp.App.12a-20a. Commissioner Graves and Rep. Stokesbary, both directors of the Citizen Action Defense Fund (CADF), made their partisan purpose crystal clear in creating what a CADF fundraising memo called "a two-pronged legal effort": challenging LD15 in *Garcia* while opposing the § 2 claim here, so that if *Garcia* succeeded, "LD15 could be redrawn to stay reliably Republican until 2030." Supp.App.39a-42a; Supp.App.36a. The memo also told prospective donors that fully litigating this case could "present several legal questions to a friendly Supreme Court that would give the Court an opportunity to reshape how the VRA operates across the country." Supp.App.40a.

The web grew more tangled still as the cases proceeded toward trial. Seven months after seeking intervention to defend LD15, Intervenors' counsel moved to add a crossclaim challenging LD15 as a racial gerrymander—even though Intervenors themselves had testified under oath that they wanted LD15 unchanged and did not believe it was gerrymandered. App.243; Doc.127-1 at 121:4-10; Doc.127-2 at 21:1-11. Intervenors' counsel then told the court that if their new crossclaim were allowed, Mr. Garcia would dismiss his claim—even though Mr. Garcia testified he was unaware of this proposal and would do no such thing. Doc.150; Doc.191-7 at 47:8-48:2, 50:2-17, 59:12-61:14. After the State initiated an ethics inquiry, Intervenors' counsel filed an "errata" recasting Mr. Garcia's testimony in their favor, which the court struck in its entirety as a "sham." Doc.173.

The court denied leave to add the crossclaim as untimely, prejudicial, and duplicative of *Garcia*, but in the interest of judicial efficiency, ordered the two cases consolidated for trial, which took place in June 2023. App.82-85. The *Soto Palmer* trial began before a single-judge district court, and the remaining evidence was presented over three more days before the three-judge district court empaneled for *Garcia*'s equal protection claim, of which the *Soto Palmer* judge was a member.

IV. The district court invalidates LD15 under § 2.

On August 10, 2023, the *Soto Palmer* district court ruled that LD15 violated § 2's prohibition on discriminatory results—a decision based on an "extensive record," including the live testimony of 15 witnesses, the deposition testimony of 18 witnesses, and 548 admitted exhibits. App.45.

The court found all three *Gingles* preconditions satisfied: Latino voters in the Yakima Valley are undisputedly numerous and compact enough to form a majority in a reasonably configured district; they are politically cohesive; and white bloc voting usually defeats Latino-preferred candidates. App.54-59. The record showed, moreover, that polarization in the Yakima Valley is attributable to race, not just partisanship. *See infra* Part IV.

The court also found that LD15 diluted the Latino vote under the totality of the circumstances. App.74. Those circumstances included discriminatory "official election practices and procedures" maintained "as recently as the last few years," App.61, overt racial appeals in recent elections, and persistent

suppression of Latino participation, especially among agricultural workers due to fear of retribution from white land-owning employers, App.65. Mr. Garcia also testified to intra-party racial discrimination he experienced running for elected office in the region.

Although the district court did not reach Plaintiffs' separate claim of intentional discrimination, the "extensive record" premising the decision also strongly indicated that Commissioners intentionally drew an LD15 that diluted Latino voting strength while remaining nominally majority-HCVAP. *See infra* Part IV.

On September 8, 2023, the three-judge court dismissed the *Garcia* racial gerrymandering challenge to LD15 as moot. Because the *Soto Palmer* decision meant LD15 "will be redrawn and will not be used in its current form for any future election," the court reasoned that Mr. Garcia had already obtained all the relief he sought. App.106.

Intervenors alone appealed the § 2 liability decision; the State and the Secretary declined. Before remedial proceedings began in the district court, Intervenors filed a petition for certiorari before judgment to bypass the Ninth Circuit, which this Court denied. *Trevino v. Palmer*, 144 S. Ct. 873 (2024) (mem.). They then filed a motion to hold their liability appeal in abeyance pending the district court's remedial proceedings, which the Ninth Circuit granted. No. 23-35595, Docs.48, 59.

V. The district court selects a remedial map drawn without consideration of race.

After its liability decision, the district court first afforded the State an opportunity to adopt a new plan

through Washington's constitutional redistricting process. App.32. When the State declined, the court set remedial briefing deadlines for the parties to file remedial maps, expert reports, and briefs, along with responses and replies, to have a lawful map in place by the Secretary of State's requested date of March 25, 2024. The court also appointed a special master to evaluate the submissions. *Id.*

Plaintiffs timely submitted five remedial map proposals drawn by their expert, Dr. Kassra Oskooii. *Id.* Dr. Oskooii drew every map blind to race and politics: he removed all racial and political data from the mapping software and considered neither in drawing districts. Doc.245-1 at 4-5; Supp.App.5a-8a. Beginning from the enacted map, he made only the changes necessary to unite the Yakima Valley population centers the court had identified as a community of interest, while adhering to Washington's redistricting criteria, equal-population requirements, and other communities of interest, including the Yakama Nation Reservation. Doc.245-1 at 4-5. No other party submitted proposed remedial maps by the court's deadline.

After Intervenors filed a response criticizing the proposals, Plaintiffs filed slightly revised versions that eliminated nearly all incumbent displacement in the districts surrounding LDs14 and 15. App.32, Doc.254-1.

Assisted by the special master, the court reviewed the maps, briefs, and expert reports, and heard oral argument, at which it informed the parties it was leaning toward Plaintiffs' Map 3A. At Intervenors' request, the court also scheduled an evidentiary hearing focused on that map, inviting supplemental

briefing, expert reports, and the participation of the Yakama Nation. All parties—the State, Intervenors, the Yakama Nation, and court alike—identified the importance of keeping the Yakama Nation Reservation, together with its off-reservation trust lands and fishing villages, in a single district to the extent practicable. App.32-35. In the lead-up to the hearing, Intervenors filed a map of their own, but their expert testified it was not meant to remedy the § 2 violation, Supp.App.11a, and it split the Yakama Nation Reservation between two districts, failing to respect the Nation's basic request, as well as the State's preferences. *Id.* at 9a. Following the evidentiary hearing, the court directed miniscule alterations to Map 3A, which thereafter became Map 3B. App.33-34.

On March 15, 2024, the district court ordered in place Plaintiffs' Map 3B, which included a new LD14 that remedied the § 2 violation while respecting traditional redistricting criteria—including the priority of the State to unite the Yakama Nation Reservation with its off-reservation trust lands along the Washington-Oregon border. App.32-35. Map 3B was not drawn or adopted to favor either political party and, preserved the prior map's slight Republican lean. App.40-41. The remedial map did not reconfigure Rep. Ybarra's LD13 to make it more Democratic. Doc.254-1 at 43. And Intervenors offered no objection or evidence that any change to LD13 would make Rep. Ybarra's reelection any more difficult—in fact, he ran unopposed in 2024 for reelection in LD13 and spent less doing so than in his 2022 campaign under the prior map. Throughout the remedial proceedings, despite ample opportunity,

Intervenors never argued that the remedial map or any proposed remedial map was a racial gerrymander.

Intervenors alone appealed the remedial order; the State and the Secretary declined. The Ninth Circuit consolidated Intervenors' liability and remedial appeals and denied their motion to consolidate those appeals with *Garcia*. No. 24-1602, Docs.22.1, 37.1.

VI. The Ninth Circuit unanimously rejects intervenors' appeal.

Applying settled Article III principles, the Ninth Circuit held that neither Intervenor had proven standing to challenge the § 2 liability determination. Mr. Trevino's alleged injury—racial classification from being moved from LD15 to LD14—was traceable only to the remedial map's drawing, not to the antecedent liability ruling, which was never shown to classify or treat him unequally based on his race. App.10-12. Rep. Ybarra's alleged candidate injuries failed for the same reason and, if he had cognizable harms at all, they were either in the past or too speculative as to future elections in which he may not even run. App.13-15.

The Ninth Circuit likewise held that neither Intervenor had standing to press a § 2 vote dilution claim against the remedial map. App.15. The only possible "evidence" of a dilution injury they proffered was the "bare assertion" of decline in the remedial LD14's HCVAP. App.17. From that, the court could not infer "the vote of Jose Trevino, the only Intervenor who lives in the new LD14, has been diluted" because dilution, by law, does not arise from the sole fact of being Hispanic and having to vote alongside fewer Hispanics. *Id.*

The Ninth Circuit held that Mr. Trevino—the only Intervenor who lived in the allegedly racially gerrymandered district—had standing to challenge the remedial LD14. App.17-18. But the court observed that he had likely forfeited that claim by never raising it in the district court. App.19.

In exercising its discretion to reach the merits, the court held that Mr. Trevino's racial gerrymandering claim would fail anyway because race did not "predominate[]" in the drawing of the remedial map. App.20-21 (citing *Cooper v. Harris*, 581 U.S. 285, 292 (2017)). The court recognized that the remedial map was drawn to unite communities of interest, including the Yakama Nation, while avoiding gratuitous changes to the enacted plan and adhering to legal and traditional redistricting criteria. App.21, 28, 29. Based on its review of the record, the Ninth Circuit also found that the district court ultimately selected Map3A compared to other remedial proposals because "it was most 'consistent with traditional redistricting criteria'" and the State's nonracial policy goals. App.25. As for the district court's recognition that the remedial map united a recognized community of interest in the Yakima Valley sharing numerous tangible interests beyond race, the Ninth Circuit found this "far from sufficient to show that race predominated." App.27. And "[e]ven if race . . . were '*a* motivation' in the district court's actions, which it was not, that motivation alone would not trigger strict scrutiny." App.28. Upon finding Intervenors' other objections to the remedial map "not germane to the issue of racial predominance," App.29-30, the Ninth Circuit affirmed the district court's remedial order.

REASONS FOR DENYING THE PETITION

Denial is warranted for a host of reasons. Most fundamentally, the Petition has a glaring jurisdictional defect. Intervenors—two individuals who have nothing to do with enforcing Washington's state legislative districts and have suffered no injury-in-fact, let alone one traceable or redressable to the lower court's liability decision—lack standing to appeal both the liability decision and the remedial decision on the basis of vote dilution.[4] Moreover, Intervenors failed to raise their racial gerrymandering claim against the remedial map in the district court, forfeiting the basis for their second question presented, which this Court should not use its discretion to reach.

Beyond these threshold deficiencies, this Court should deny review because Intervenors identify no circuit split on the questions presented, the remedial district challenged as a racial gerrymander was drawn and adopted without considering race, and on all issues both courts below engaged in correct and straightforward application of settled precedent that also comports with this Court's recent decision in *Louisiana v. Callais*, 146 S. Ct. 1131 (2026). Intervenors' hyperbolic concern about procedural "manipulat[ion]" is unfounded because no such manipulation occurred. Pet.16. As this Court's

[4] Intervenors claim (at 15) that their alleged injuries from the liability determination are "uncontested," but that is false. Respondents contested Intervenors' alleged injuries from the moment they intervened below. Doc.64. Intervenors never proved any harms they allege, and both courts below *rejected* Intervenors' allegations of injury stemming from the liability decision. App.10; Doc.318.

precedent establishes, litigants who face actual harm can seek relief, and those with only generalized grievances properly cannot.

Moreover, Intervenors offer no basis to conclude that the standing questions raised here are recurring. They identify no prior case presenting similar questions and no reason to expect any. That is unsurprising because this case reaches the Court, as the Ninth Circuit put it, "in an unusual posture." App.2.

Unlike most § 2 cases, here the government did not appeal. Instead, the appeal was taken by Intervenors—one of whom does not even live in the relevant district—who have assumed shifting, incoherent positions throughout the litigation. In essence, they entered this case purporting to *defend* LD15 but now insist that their desired outcome is to *challenge* LD15 as a racial gerrymander. But if invalidating LD15 is the goal, the liability decision they seek to undo achieved it. A decision delivering the relief Intervenors now seek cannot be the source of cognizable harm. To the extent their positions can be explained at all, it is by the partisan goals Intervenors' counsel and Commissioner Graves acknowledged in writing at the outset: to produce more Republican seats in the Yakima Valley with the help of a "friendly Supreme Court." Supp.App.40a. But this Court does not so easily permit litigants to "sidestep [its] holding in *Rucho* that partisan-gerrymandering claims are not justiciable in federal court." *Callais*, 146 S. Ct. at 1158 (quoting *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 21 (2024)).

This unusual petition also makes for a poor vehicle to clarify candidate standing. Rep. Ybarra neither represents nor resides in the district at issue in this case, and no decision below had any bearing on his prospects as a candidate in the neighboring LD13. And Rep. Ybarra's independent standing to challenge the remedial map need not be resolved because the Ninth Circuit found Mr. Trevino already had standing. The substantive outcome of the appeal would not change even if this Court reviewed Rep. Ybarra's standing, making it a poor vehicle for such review.

In short, this case presents proper application of settled precedent amid tangled facts of Intervenors' own making. The decision below remains correct following *Callais*, and Intervenors lack standing to raise or have forfeited the questions they ask this Court to take up. Review should be denied.

I. Intervenors lack standing to appeal the district court's liability order and the remedial map on the basis of vote dilution.

A. Intervenors lack standing to appeal the district court's liability order.

The Ninth Circuit correctly held that Intervenors lack standing to appeal the district court's liability determination. To establish standing, a litigant must demonstrate "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (internal quotations omitted). "As th[is] Court has repeatedly recognized, to appeal a decision that the primary party does not challenge, an intervenor must independently demonstrate

standing." *Va. House of Delegates v. Bethune-Hill*, 587 U.S. 658, 663 (2019); *Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013). This ensures that "the decision to seek review . . . is not to be placed in the hands of 'concerned bystanders,' who will use it simply as a 'vehicle for the vindication of value interests.'" *Diamond v. Charles*, 476 U.S. 54, 62 (1986) (citation omitted); *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 65 (1997) ("An intervenor cannot step into the shoes of the original party unless the intervenor independently 'fulfills the requirements of Article III.'" (quoting *Diamond*, 476 U.S. at 68)).

Because the State and Secretary appealed neither the district court's liability decision nor the remedial map and Intervenors filed separate appeals of both orders each asserting various claims, the Ninth Circuit carefully evaluated the standing of each Intervenor "on a claim-by-claim basis." App.10 (citation omitted). This was a standard application of this Court's precedent. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021) ("[S]tanding is not dispensed in gross; rather, [litigants] must demonstrate standing for each claim that they press and for each form of relief that they seek."). And in doing so, the Ninth Circuit correctly held that no Intervenor had standing to appeal the liability finding.

Intervenors take issue with this analysis, complaining (at 15) that it allows courts to "deprive litigants of standing" to appeal liability rulings via delayed remedial proceedings. But Intervenors *delayed their own liability appeal*, filing a motion to hold it in abeyance pending the district court's remedial proceedings, which the Ninth Circuit

granted. No. 23-35595, Docs.48,59. In doing so, they told the Ninth Circuit that delaying their liability appeal "will conserve private, public, and judicial resources and will not cause meaningful prejudice to anyone." No. 23-35595, Docs.48 at 2. Intervenors cannot now claim that their own conduct injures them.

Relatedly, Intervenors worry (at 19) that an "adverse liability determination" might be shielded from review because of bifurcated proceedings. But avenues existed for review of the liability decision, and Intervenors utilized them—appealing the liability decision, seeking to stay it at the Ninth Circuit, and seeking to overturn it in a petition for certiorari before judgment from this Court. In opposing each of these efforts, *Soto Palmer* Respondents argued that Intervenors lacked standing to appeal as well as other merits flaws, and Intervenors' stay and certiorari efforts were denied.[5] Intervenors' may disagree with those outcomes, but this chain of events could not "deprive[]" them "of standing," Pet.19, that they never had. Intervenors then voluntarily paused their own liability appeal. It was thus Intervenors' foundational jurisdictional defects and own litigation choices—not any bifurcation of proceedings by the district court—that doomed their appeal.

Moreover, holding remedial proceedings after a liability finding is not only typical but consistent with

[5] *See* No. 23-35595, Doc.45 (Ninth Circuit denying Intervenors' request to stay liability decision); *Trevino v. Palmer*, 144 S. Ct. 873 (2024) (mem.) (denying Intervenors' attempt to overturn the district court's liability finding through a petition for certiorari before judgment).

the court's duty to give the State the first opportunity to remedy a § 2 violation. Nor is it unusual for an appellate court to find that a litigant has standing to appeal one aspect of a case but not another. *See, e.g.*, *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 340 (1980) (finding standing to appeal denial of class certification but not underlying merits determination); *Camreta v. Greene*, 563 U.S. 692, 703 (2011) (addressing standing to appeal qualified immunity determination separately from standing to appeal underlying constitutional violation). In reality, the liability ruling here is only "adverse" to Intervenors in that they disagree with it. But "[A] disagreement, however sharp," does not establish standing. *Diamond*, 476 U.S. at 62.

Intervenors also complain (at 17) that in making this determination, the Ninth Circuit "skipped over the injury-in-fact element." That is false. For example, the Ninth Circuit correctly observed that "[i]n the context of a racial-gerrymandering claim, 'racial classification itself is the relevant harm.'" App.10 (quoting *Alexander*, 602 U.S. at 38). Intervenors failed to show that the district court's liability determination classified them based on their race, and "barely argue[d] that the determination classified anyone." App.11. Nor did Trevino "allege[] that the liability determination 'required [him] to do anything or to refrain from doing anything' because of his race or otherwise." *Id.* (quoting *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 385 (2024)).

Moreover, Intervenors failed completely to demonstrate traceability or redressability as to the liability finding. App.10-13. They contend (at 19) that the liability determination and the remedial map are

"inextricably intertwined," such that standing to challenge one automatically creates standing to challenge the other. Not so. Even if it were possible in some instances to trace a racial classification injury to a liability determination, Intervenors bear the burden of tracing their specific alleged harm to the district court's liability determination. App.11 (citing *West Virginia v. EPA*, 597 U.S. 697, 718 (2022)). Here, they have "not done so." App.12.

While Intervenors argue (at 18) that liability under § 2 "involves consideration of race," this fact alone cannot establish Article III causation between the § 2 liability finding and the racial classification harms alleged against a later-enacted remedy. That is because a § 2 liability decision does not itself classify any individual on the basis of race, and once the use of a map is enjoined under § 2, the ensuing remedy need not necessarily consider race at all. *See, e.g.*, *Holder v. Hall*, 512 U.S. 874, 909-10 (1994) (Thomas, J., concurring) (noting viability of race-neutral voting systems as possible § 2 remedies). At the time of the liability determination in this case and Intervenors' appeal from that decision, there was nothing inevitable about any specific remedial map, nor even that the court would impose a map at all. App.12-13 n.3. The only inevitability was that the enacted LD15 would be replaced. And the remedy the district court ultimately ordered was, as the Ninth Circuit found, a new map drawn without *any* consideration of race. App.28.

Intervenors thus also lack standing for the additional and independent reason that the liability decision provided the outcome they now say they wanted all along: LD15 replaced with a new map,

drawn blind to race. At earlier stages of this litigation, Intervenors' "avowed purpose was to defend the existing boundaries" of the enacted map. App.81. They later changed their tune and now claim that the enacted map "constitute[ed] a racial gerrymander that violate[d] equal protection," and desire it replaced. Pet.1. And it has been. Intervenors thus lack standing because they are not harmed by a decision invalidating a map they believe is unconstitutional.[6]

B. Rep. Ybarra lacks standing to appeal as a candidate.

Rep. Ybarra lacks standing to appeal the lower courts' decisions based on his status as a candidate for a simple reason: his candidacy has not been harmed by either decision. Nor is any alleged injury traceable to the liability decision. Rep. Ybarra does not reside in or represent the challenged district, he has done no more than simply allege non-existent harms, and based on his own testimony, the remedial map *helps* rather than harms his candidacy in LD13. Indeed, this Court need not even reach Rep. Ybarra's standing to appeal the remedial decision. The Ninth Circuit declined to do so because it found that Mr. Trevino had standing to appeal on remedy, and "the presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement."

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[6] For a similar reason, the Ninth Circuit correctly affirmed the dismissal of *Garcia* as moot. App.99. As the *Garcia* district court said: "Since LD15 has been found to be invalid and will be redrawn (and therefore not used for further elections), the Court cannot provide any more relief to [Garica]." App.102. Now that Intervenors make the same arguments as Mr. Garcia, they lack standing for the same reason Mr. Garcia's claim was moot—the district they challenge is gone.

Rumsfeld v. Forum for Acad. & Institutional Rts., Inc., 547 U.S. 47, 52 n.2 (2006).

Intervenors claim the Ninth Circuit erred in finding that Rep. Ybarra lacked standing because it should have assessed redressability from when *Respondents* first filed their lawsuit. Pet.20. That argument makes little sense, as Rep. Ybarra's permissive intervention was not granted until four months later. App.86. It is also legally wrong—Article III standing is required at every step of litigation, including when a party seeks post-judgment relief. *See Already, LLC v. Nike, Inc.,* 568 U.S. 85, 90-91 (2013) (holding that standing is necessary at "all stages" of litigation). The district court also assessed his interests at the time of intervention, and found that he, like all Intervenors, lacked any harm amounting to an injury-in-fact. App.90 (finding that "intervenors have no right or protectable interest in any particular redistricting plan or boundary lines," "have no role to play in the redistricting process," "do not allege that their right to vote or to be on the ballot will be impacted by this litigation," and have not "identified any direct and concrete injury that has befallen or is likely to befall them"); App.96 (allowing only permissive intervention and not intervention as of right); Doc.318 at 6-8. All the "interests" Rep. Ybarra claimed at intervention were purely speculative or generalized grievances insufficient to establish Article III standing. *See, e.g.*, App.233 (alleging an interest in ensuring legislative districts "compl[y] with state and federal law.").

In any event, no matter when Rep. Ybarra's standing is assessed, the Ninth Circuit found he lacked it. App.2, 13-17. On appeal, the Ninth Circuit

considered the only standing arguments Rep. Ybarra presented to it: alleged "increased campaign expenditures and reduced chances of reelection" from the remedial map. App.13. Rep. Ybarra did not allege these harms at the time of his intervention—because the remedial map did not exist—and the allegations have nothing to do with defending against a § 2 liability decision. App.13-17, 232-233. Indeed, the first time Rep. Ybarra even arguably sought relief from a court was his appeal to the Ninth Circuit, not at the time of his initial intervention as a defendant. And the Ninth Circuit found that whether considering harms Rep. Ybarra alleged in the past or future, all were "too tenuous" to support his standing to challenge the liability decision—at any time. App.2, 13-15 (holding that "[t]he liability order had no assured impact whatsoever on LD13.").

Moreover, no elected official is guaranteed particular district lines—which change at a minimum after each decennial census—and Rep. Ybarra never did more than *allege* harms.[7] That has never been enough to establish Article III standing. *Gill v. Whitford*, 585 U.S. 48, 69 (2018) ("The facts necessary to establish standing, however, must not only be alleged . . . but also proved"); *Bethune-Hill*, 587 U.S. at 662-663; *Wittman v. Personhuballah*, 578 U.S. 539, 543-45 (2016) (a litigant must do more than "simply allege a nonobvious harm."). Intervenors recycle the argument that Rep. Ybarra was harmed because his neighboring LD13 was slightly reconfigured in the

[7] If any change in district lines or constituents was enough to establish standing, *every legislator* would be able to sue over changes to their district at least every ten years (and likely more frequently). That cannot be so.

remedial map and he thus must be able to challenge the liability decision. Pet.20-21. But they do not show how Rep. Ybarra was injured, or how any alleged injury is traceable to the liability decision. App.13-15.

That is because Rep. Ybarra was not injured. App.13-15. He *ran unopposed* in LD13 both under the remedial map in 2024 and in his current race for state senate.[8] It was thus impossible for Rep. Ybarra to have reduced reelection chances. Intervenors nevertheless alleged that he would expend additional resources voluntarily campaigning for a seat he was guaranteed to win, but provided no evidence for this claim. *See Fed. Election Comm'n v. Cruz*, 596 U.S. 289, 297 (2022) (litigants cannot "manufacture standing by voluntarily" incurring costs). In reality, Rep. Ybarra *spent less* campaigning under the remedial map in 2024 than he did in 2022, when he was also running unopposed under the prior map.[9] Nor is the partisan lean of Rep. Ybarra's district any different in the remedial map: LD13 went from 63.85% Republican in the enacted plan to 63.21% Republican in Map 3B. App.14. Intervenors provide no evidence to explain why this 0.64% difference in partisan performance in a district that still favors the Republican by over 13% (and is uncontested) means that Rep. Ybarra will face a more difficult election campaign. This Court has rejected just such an argument, holding that an assertion of a more difficult reelection was not enough

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[8] *Aug. 6, 2024 Primary Results, Legislative District 13*, Wash. Sec'y of State, https://perma.cc/P6F9-E66J (last visited May 31, 2026); *see also Primary 2026*, VoteWA, https://perma.cc/DJ7A-VNMC (last visited May 31, 2026).

[9] *See Candidates: Legislative District 13-House*, Wash. Pub. Disclosure Comm'n, https://perma.cc/KFX7-C52T (last visited May 31, 2026).

to sustain an appeal when the Congressmen making the assertion had "not identified record evidence establishing their alleged harm." *Wittman*, 578 U.S. at 545; *see also Rucho v. Common Cause*, 588 U.S. 684, 721 (2019) (holding that federal courts have no Article III jurisdiction to adjudicate disputes about the partisan composition of districts).

If anything, the record suggests that the remedial map *better* reflects Rep. Ybarra's wishes for his own district boundaries: it adds specific communities to his district that he testified he desired and removes areas he did not. Doc.127-1 at 79:12-80:11. Indeed, Rep. Ybarra successfully won reelection under the remedial map and is now catapulting from that victory to run unopposed for state senate.[10] Thus, even if Rep. Ybarra experienced any harm—he did not—it is now moot. Intervenors have not established *any* injury to Rep. Ybarra sufficient to establish standing to challenge the lower court's liability or remedial decisions. Based on his own testimony, the new map *helps* rather than *harms* Rep. Ybarra's election interests.[11]

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[10] *See Primary 2026*, VoteWA, https://perma.cc/DJ7A-VNMC (last visited May 31, 2026) (showing Rep. Ybarra running uncontested). As the Ninth Circuit noted, the 2024 election—where Rep. Ybarra experienced no harm—was well over by the time the case was heard and the court issued its decision. App.13 (noting no remedy could redress any injury).

[11] Intervenors state that Rep. Ybarra's new LD13 has a different racial makeup, but do not explain how that fact alone could possibly cause him harm. They cannot and do not claim that LD13 was racially gerrymandered. Given that the entire remedial map was drawn without consideration of race, Intervenors could not meet that burden and do not try.

Nor does this Court's decision in *Bost v. Illinois State Board of Elections* suddenly provide Rep. Ybarra the harm he's been missing from the start. 607 U.S. 71 (2026). In a single paragraph, Intervenors claim Rep. Ybarra suffered an injury from a "deprivation of fair process" because his alleged interpretation of the legality of the original LD15 differs from that of a lower court. Pet.23. But in *Bost*, this Court recognized candidate standing to challenge departures from pre-ordained *vote-counting* rules. 607 U.S. at 79. Even if a law's potential effect on a candidate's electoral prospects constitutes a cognizable injury within the limited scope of *Bost*—i.e., candidates' standing to challenge rules affecting the "counting of votes in their elections," 607 U.S. at 82—it most certainly is not a cognizable Article III injury for redistricting claims. Rep. Ybarra has not alleged that any negligible changes to LD13 in the remedial map resulted in an inaccurate count of votes or impacted the integrity of his election in his uncontested race.

Moreover, Intervenors' gloss on "deprivation of fair process" under *Bost* would make it meaningless. *Bost* does not hold that any candidate that disagrees with a lower court's legal interpretation (a generalized grievance) has standing. *See, e.g.*, *Lance v. Coffman*, 549 U.S. 437, 439, 442 (2007) (per curiam) (finding no standing where the only injury alleged was that "the law . . . has not been followed"); *but see* Pet.23 (alleging harm because "the district court[] depart[ed] from the law"). If that were true, *any* litigant who might lose could establish legal harm. Nor, again, did the district court's liability decision necessarily mean LD13, a district adjacent to the challenged district, would be changed in any way. App.13-15. And, as explained above, the changes to Rep. Ybarra's district in the

remedial map did not hurt him—in fact they helped him. As a result, none of the harms endorsed by the *Bost* Court flow from Rep. Ybarra's allegations, and Rep. Ybarra cannot establish standing.

C. Intervenors lack standing to challenge the remedial map on the basis of vote dilution.

Neither Intervenor has standing to challenge the remedial map on the basis of vote dilution. App.16-17. As a threshold matter, neither Intervenor sufficiently *alleged* vote dilution, let alone an injury sufficient to establish it. *Id.* Nor did they bring such a claim against any remedial district. App.15. Indeed, Intervenors feeble attempt to undo the remedial map "contradict[s] the heart of their position" throughout this entire litigation, that § 2's requirements have not been met in the Yakima Valley. App.15.

Intervenors only argument is that their vote has been diluted solely because the HCVAP of the remedial district differs slightly from the original LD15. Pet.21.[12] On that basis, they claim this case "will become a vehicle by which race-based vote dilution can be *increased* rather than reduced." *Id.* at 26 (emphasis in original). But this claim egregiously misunderstands the law. Even before *Callais*, this

[12] Curiously, Intervenors originally told this Court that the issue on appeal would be whether a remedial district required *too many* Latino voters. Petition for Writ of Certiorari Before Judgment at 8, *Trevino v. Soto Palmer*, No. 23-484 (U.S. Nov. 3, 2023) (the "result of this litigation is a court-ordered remedial map that must essentially be comprised of a supermajority of Latinos"). Now they argue the opposite—that the district court's remedial district with less than a super-majority is illegal. This about-face demonstrates the lack of merit in their arguments.

Court's precedent did not allow a litigant to allege vote dilution, let alone establish harm, solely based on a district's demographics. *See, e.g.*, *Thornburg v. Gingles*, 478 U.S. 30, 66 (1986) (setting out the *Gingles* test and holding that courts must "take a 'functional' view of the political process and conduct a searching and practical evaluation of reality" in determining § 2 liability) (internal citation omitted). Neither Intervenor even attempted to demonstrate that the change in HCVAP in the remedial district meant the value of their vote was "contract[ed]" in any way, *Wesberry v. Sanders*, 376 U.S. 1, 7 (1964) (describing vote dilution), or that they lacked an equal opportunity to participate in the political process.[13] App.17. Nor can such a bare assertion based on demographics alone suffice to establish vote dilution post-*Callais*. 146 S. Ct. at 1159-60; *see also* App.17 ("We decline to infer from Intervenors' allegations that the vote of Jose Trevino . . . has been diluted merely because he is Hispanic and will now vote alongside fewer Hispanics.").

More fundamentally, Rep. Ybarra does not reside in, vote in, or represent the remedial district, and thus

[13] Intervenors also argue that because prior LD15 state senator Nikki Torres is Latina, she *must* be the Latino-preferred candidate. That assumption is as offensive as it is incorrect. Under this Court's own precedent, a minority *candidate* is not automatically the minority *candidate of choice*. *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 438-41 (2006). The record established that Ms. Torres was *not* the Latino candidate of choice. Ex.2. And under Intervenors' own theory, there could be no vote dilution in the remedial district, which in 2024 elected Latina Republican Gloria Mendoza as a state representative (along with two other Republicans). *See 14th Legislative District*, Yakima County, https://perma.cc/HRW8-V6UM (last visited May 31, 2026).

has no standing to challenge it. He certainly has not alleged or shown that his vote has been diluted in LD13—nor could he. At bottom, neither Intervenor even attempted to allege that they could satisfy the *Gingles* preconditions and totality analysis, let alone *Callais*' reformulation of those factors in relation to the remedial map. *Callais*, 146 S. Ct. at 1159-60. Rather, all the evidence in the record demonstrates that the remedial map, drawn without consideration of race at all, in fact complies with *Callais* and provides *all voters* with an equal opportunity to elect candidates of their choice. App.21, 28. Intervenors lack standing to challenge any remedial district for vote dilution.

D. Intervenors' political aims do not confer standing.

Intervenors' primary purpose in this litigation is to pursue their partisan aims for LD15, which disproves any standing to appeal. *See Whitford*, 585 U.S. at 72 ("this Court is not responsible for vindicating generalized partisan preferences"). Though Intervenors attempt to disguise their partisan aim as various harms, the goal is no secret; they openly outlined their partisan purpose in writing. Supp.App.30a, 40a-41a. But as this Court reiterated just weeks ago, "partisan gerrymandering claims are not justiciable in federal court." *Callais*, 146 S. Ct. at 1163. If Intervenors' partisan aims are not properly screened out at the jurisdictional phase, "and a § 2 claim is cynically used as a tool for advancing a partisan end, the VRA's noble goal will be perverted." *Id.* For these reasons, Intervenors lack standing to appeal either of the decisions below.

The standing requirement exists to ensure that Article III courts adjudicate only actual cases and controversies and to prevent third parties from using federal courts to vindicate only partisan or policy interests. *See Hollingsworth*, 570 U.S. at 715; *Rucho*, 588 U.S. at 718 (holding that claims based on partisan results of elections are nonjusticiable in federal courts). However, the level of partisan advantage in LD15 has been the basis for Intervenors' involvement in this suit from the start.

In preparing to intervene in this litigation, Intervenors' counsel Rep. Stokesbary made crystal clear that the purpose of intervention was to further those partisan interests. In writing, Mr. Stokesbary noted his (unfounded) concern that this case could result in a "safe Democratic district in Central WA." Supp.App.30a. To combat this, he circulated a memo to solicit funds for Intervenors' participation in *Soto Palmer*, stating that intervention had "as much to do with the political context as the legal issues." Supp.App.24a-27a. The "legal implications" included the effect of the VRA on partisan outcomes and how the case could be used to allow "a friendly Supreme Court" to "reshape how the VRA operates across the country," while the "political implications" included ensuring that "LD15 could be redrawn to stay reliably Republican until 2030." Supp.App.40a-41a. These undeniably partisan aims demonstrate that Intervenors' involvement has always been a "vehicle for the vindication of value interests," a far cry from any injury sufficient for Article III standing. *Diamond*, 476 U.S. at 62 (internal citation omitted).

Intervenors' "cannot circumvent" the State's preferences or Article III's standing requirement "by

dressing their political . . . claims in racial garb." *Callais*, 146 S. Ct. at 1158. Their partisan aims undermine their standing here.

II. Intervenors forfeited their racial gerrymandering challenge to the remedial map.

Though the Ninth Circuit held that at least one Intervenor had standing to press their "equal protection claim" against the remedial map, Intervenors forfeited that claim by failing to properly raise and preserve it below. This Court therefore should not reach Intervenors' second question presented. Despite numerous opportunities over months of remedial proceedings in the district court, Intervenors never once contended that any proposed remedial map, including the selected map, was a racial gerrymander in violation of the Equal Protection Clause. App.32-33, 35-41. The Ninth Circuit, though it opted to address the merits, said as much, finding the claim "likely forfeit[ed]." App.2, 19-20.

Forfeiture is reason enough to deny review. A litigant who believes an error has occurred "must object in order to preserve the issue," and if "he fails to do so in a timely manner, his claim for relief from the error is forfeited." *Puckett v. United States*, 556 U.S. 129, 134 (2009). The rule is not a technicality. It prevents litigants from "sandbagging" (holding an objection in reserve and pressing it only after the case doesn't go their way) and ensures the district court, ordinarily "in the best position to determine the relevant facts," has a chance to address it. *Id.*

Intervenors had every opportunity to make their racial gerrymandering objection to the remedial map in the trial court and declined. *See* App.35-41 (considering Intervenors' objections, racial gerrymandering none among them). Instead, they raised it for the first time on appeal and now seek this Court's discretionary review. The Ninth Circuit, which has mandatory appellate jurisdiction, still addressed the claim on its merits. But this Court's review on certiorari "is not a matter of right, but of judicial discretion," and a petition is granted "only for compelling reasons." Sup. Ct. R. 10. A claim Intervenors never attempted to raise, let alone prove, in the forum best suited to assess it provides no such reason.

III. The Ninth Circuit correctly upheld the remedial map under settled precedent.

Even if Intervenors had preserved their racial gerrymandering claim against the remedial map, the Ninth Circuit correctly held that they failed to clear the threshold requirement of racial predominance. App.21. Intervenors ask (at 25) to dispense with that requirement, but they offer no basis to do so. As this Court put it just weeks ago in *Callais*, "in gerrymandering cases a challenger *must* show that race was the government's predominant consideration." 146 S. Ct. at 1147 (emphasis added).[14] Race predominates where the mapdrawer "purposefully establishe[s] a racial target," *Cooper v.*

[14] Intervenors' reliance (at 24-25) on *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 600 U.S. 181 (2023), is therefore misplaced. That decision governs race-based admissions, not the inquiry applicable to redistricting claims like this one.

Harris, 581 U.S. 285, 299 (2017), or "subordinate[s] traditional race-neutral districting principles . . . to racial considerations." *Miller v. Johnson*, 515 U.S. 900, 916 (1995). Absent racial predominance, strict scrutiny does not apply.

First, Intervenors cannot satisfy that standard—nor any standard less than predominance—because race did not "play[] a role in the drawing of district lines." *Callais*, 146 S. Ct. at 1161 (quoting *Alexander*, 602 U.S. at 8). Indeed, race was not considered ***at all*** in drawing the remedial map and did not drive the district court's selection of it. Unlike in *Callais*, where the state intentionally set a 50%-plus racial target in drawing the district at issue, 146 S. Ct. at 1161, the mapdrawer here referenced no racial data and drew every proposed map based on statutory and traditional criteria alone. Doc.245-1; App.21. The district court then selected among those maps for race-neutral reasons: traditional redistricting criteria and the State's goals of keeping tribal lands together and avoiding cross-Cascades districts. App.25, 28 (holding that race "was not" a motivation).

Intervenors' claim (at 25) that strict scrutiny applies because the district court "focused on" a Latino community of interest "in drawing the remedial map" is wrong on multiple levels. Plaintiffs' expert drew the map (not the district court) and drew it race-blind. The district court's recognition of that community is "far from sufficient" to trigger strict scrutiny. App.27. "A State is free to recognize communities that have a particular racial makeup, provided its action is directed toward some common thread of relevant interests." *Miller*, 515 U.S. at 920. The district court expressly found the Yakima Valley

community is defined by far more than race—a shared rural and agricultural economy, common labor and housing concerns, language, and religious and cultural practices. App.55. Keeping it whole also followed Washington's statutory directive that district lines coincide with communities of interest. RCW 44.05.090(1).

Intervenors' alternative theory (at 25), that the map was selected based on "politics rather than race," would foreclose their racial gerrymandering claim entirely, if true. *See Callais*, 146 S. Ct. at 1156-57. But it is not true: Plaintiffs' expert drew the map without reference to political data consistent with Washington's prohibition on favoring any political party, RCW 44.05.090(5), and the map preserved the enacted plan's pro-Republican lean. App.29, 40-41.

Second, even if strict scrutiny applied (it does not), the district court's § 2 liability decision would supply a compelling interest under *Callais*. 146 S. Ct. at 1143. With respect to *Gingles* I, there are numerous maps in the record that meet *Callais*' requirements, including all the remedial proposals drawn race-blind while meeting all the State's "legitimate districting objectives," including political goals. 146 S. Ct. at 1159; App.21.

Regarding *Gingles* II and III, the district court rejected as factually unsound the contention that partisanship rather than race explained polarization in the region. App.77-78. The State's expert testified that there is "a real ethnic effect on voting in this area" as distinct from a partisan one. Doc.209 at 853:15-854:15. Plaintiffs' expert found racial polarization and white bloc voting in numerous nonpartisan races. Ex.1 at 15-16. And Intervenors'

own expert identified evidence of cohesive Latino voting preferences distinct from partisanship in an election where Latino voters preferred a Republican over a Democrat, but that candidate lost due to white voting patterns. App.56 n.8 & 77 n.14. Mr. Garcia also testified to racial discrimination he faced within the state Republican Party running for office as a Latino Republican in the region. Doc.191-7 at 75:2-77:13, 90:12-92:15. This is strong evidence of "intra-party racial-bloc voting," demonstrating minority voters have "less opportunity than their majority counterparts because of race, not just because of partisan affiliation." *Callais*, 146 S. Ct. at 1159 (internal quotation omitted).

Furthermore, "current conditions" in the Yakima Valley "show an objective likelihood of intentional discrimination based on the totality of circumstances." *Id.* at 1162. Those circumstances include, for example, discriminatory "official election practices and procedures" maintained "as recently as the last few years," App.61, overt racial appeals in recent elections, and persistent suppression of Latino participation, especially among agricultural workers due to fear of retribution from white land-owning employers. App.65. Other extensive record evidence established that the Commissioners purposefully drew an LD15 that would not elect known Latino-preferred candidates while remaining nominally majority-HCVAP, including various draft maps, contemporaneous statements during negotiations, and evidence of significant departures from ordinary process. *See, e.g.*, Ex.487.

In short, the second question presented is one *Callais* has already answered in favor of affirming the

district court's remedial order. It does not merit review.

CONCLUSION

For the foregoing reasons, the Petition should be denied.

June 2, 2026

Respectfully submitted,

Chad W. Dunn
Sonni Waknin
UCLA Voting Rights Project
3250 Public Affairs Bldg.
Los Angeles, CA 90095

Thomas A. Saenz
Ernest Herrera
Mexican American Legal
Defense and Education Fund
643 S. Spring St., 11th Fl.
Los Angeles, CA 90014

Edwardo Morfin
Morfin Law Firm PLLC
2062 N. Proctor St., Ste. 205
Tacoma, WA 98407

Mark P. Gaber
Counsel of Record
Simone Leeper
Aseem Mulji
Benjamin Phillips
Isaac DeSanto
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005
(202) 736-2000
mgaber@campaignlegal.org

Annabelle E. Harless
Campaign Legal Center
55 W. Monroe St., Ste. 1925
Chicago, IL 60603

Counsel for Respondents Susan Soto Palmer, Alberto Marcias, Faviola Lopez, Caty Padilla, and Heliodora Morfin.

APPENDIX

TABLE OF APPENDICES

APPENDIX A — EXCERPTS FROM REMEDIAL HEARING TRANSCRIPT, 3/8/24

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

C22-5035-RSL

SUSAN SOTO PALMER, *et al.*,

Plaintiffs,

v.

STEVEN HOBBS, *et al.*,

Defendants.

JOSEPH TREVINO, *et al.*,

Intervenor-Defendants.

March 8, 2024 — 1:30 p.m.

EVIDENTIARY HEARING

**VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE ROBERT S. LASNIK
UNITED STATES DISTRICT JUDGE**

Appendix A

APPEARANCES:

For the Plaintiffs:
Annabelle Harless
Campaign Legal Center
55 W. Monroe Street, Suite 1925
Chicago, IL 60603

Simone Leeper
Aseem Mulji
Benjamin Phillips
Campaign Legal Center
1101 14th Street N.W., Suite 400
Washington, DC 20005

Ernest Israel Herrera
Mexican American Legal Defense
and Educational Fund
634 S. Spring Street, 11th Floor
Los Angeles, CA 90014

[2] For Defendant Steven Hobbs:
Karl David Smith
Attorney General's Office
P.O. Box 40100
1125 Washington Street S.E.
Olympia, WA 98504-0100

For Defendant State of Washington:
Cristina Sepe
Andrew Hughes
Attorney General's Office
800 Fifth Avenue
Suite 2000
Seattle, WA 98104

Appendix A

For the Intervenor-Defendants:	Caleb Acker Holtzman Vogel Baran Torchinsky & Josefiak PLLC 15405 John Marshall Highway Haymarket, VA 20169
	Dallin Holt Holtzman Vogel Baran Torchinsky & Josefiak PLLC 2575 E. Camelback Road, Suite 860 Esplanade Tower IV Phoenix, AZ 85016
	Andrew Stokesbary Chalmers Adams Backer & Kaufman LLC 701 Fifth Avenue, Suite 4200 Seattle, WA 98104

[3] EXAMINATION INDEX

Appendix A

EXHIBIT INDEX

* * *

KASSRA A.R. OSKOOII—Direct (Mulji)

[28] evaluated proposed congressional maps, and then, eventually, the enacted or adopted Florida congressional maps.

Q Let's turn now to this case. Can you please tell us what you were retained to do here?

A Yes. I was asked to rely on Washington's redistricting criteria and traditional redistricting principles to craft a Legislative District 14 that unites population centers from East Yakima to Pasco, along the Yakima Valley, which form a community interest, as identified by the court. And I was very specific as to not rely on any racial and ethnic data or otherwise view it or reference it, and the same goes for any political, electoral, or partisan analytics data.

Q And before we delve into any one specific map, would you mind explaining your general approach? How did you sit down to start, when you started this task?

A So in a case of remedial scenario, the way it works, I started with an Enacted Map for Washington State, and I attempted to introduce only changes that were necessary to craft the Legislative District 14, remedial Legislative District 14.

Q You mentioned a couple of things you did not consider. One of them was political data and election data. How did you shield yourself from that data while drawing maps?

A So I relied on Dave's Redistricting Application for drawing these remedial proposals, and it's very simple, actually, when it comes to political or partisan analytics. Before you start [29] drawing the lines, there's

a "Settings" tab, where you can click out or remove any political or partisan data, and that's what I did.

Q The same question for racial demographic data. How do you shield your eyes from that?

A Yeah. You can take out racial and ethnic demographic data breakdowns by county, cities, VTDs, or blocks by removing, essentially, two tabs on each side of the application.

Q I would like to turn to page 17 of your January 5th report, which was filed at Docket No. 245-1. And, for the record, that's ECF Page No. 18. And I will wait for us to get there.

MR. MULJI: Docket No. 245-1. Apologies, Your Honor, technical difficulties. And I gave away my binder, but actually—thank you.

And my apologies. That's actually Docket No. 277 that I'm asking about, at page 17. Oh. No, I'm sorry. I was correct. 254-1. I'm getting my numbers all mixed up.

It's up. Wonderful.

Q For clarity of the record, I'm pulling up page 17 of 254-1, a filed document, and that's your March or your—I'm sorry, your January 5th report. Do you see that on your screen now?

A Yeah, I see a report. Yes.

Q Okay. And do you see a couple of maps there on your screen?

A Yes. I see one at least.

Q I'm going to actually just use the ELMO here.

* * *

[32] Q Now, perhaps this goes without asking, but for clarity of the record, did race predominate in the drawing of any maps that you submitted in this case?

A No. Since I did not have access to race and ethnicity data while drawing, it wasn't even a factor for it to even predominate.

Q Let's turn now to Map 3A, and we will try to pull it up on the screen.

MR. MULJI: There we go. Thank you.

Your Honor, my colleague has pulled up the HTML version of Map 3 that was submitted to the court by e-mail.

Q Dr. Oskooii, do you see Map 3A on your scene?

A Yes, I do.

Q All right. And is the approach that you just described a little earlier the same approach you used to draw up Map 3A?

A Yes.

Q Now, you also drew a map labeled "Map 3." Can you explain the difference between Map 3A and Map 3?

A Yeah. There is a very minor difference between 3 and 3A. 3A is introduced with incumbent pairing based on updated addresses that I received.

Q Now, turning specifically to District 14 in this map, is the version of LD 14 in Map 3A the same as the LD 14 in Map 3?

A Yes, it is.

Q And what's distinctive about this particular configuration of

* * *

[39] mentioned an issue with the Hanford Nuclear Site. Can you say more about that?

A Yes. I believe that intervenors have argued in the past that the Hanford Nuclear Site is of strategic importance to the city of Richland for various reasons, and the only thing that I can note is that the Hanford Nuclear Site is segregated from the city of Richland in Dr. Trende's map, but that is not the case in Map 3A.

Q How does Dr. Trende's map compare with yours in terms of compactness?

A Yes. In terms of compactness, Dr. Trende and I have consistently used two compactness scores, Polsby-Popper and Reock. And when it comes to Polsby-Popper, we achieve the same compactness score; however, on the Reock metric, Map 3A scores higher, which means—which is indicative of a more compact map.

Q And, finally, how does Dr. Trende's map compare in its treatment of the Yakima Nation's stated concerns in this case?

A Yes. Another issue, if I may say, of Legislative District 15 in Dr. Trende's map is that it actually cuts a portion of the Yakima Nation Reservation and segregates it from LD 14 and puts it in LD 15. And this is not just an issue of like trapped polygons or zero-population areas, because that can be addressed and resolved. There are actually people who live on that section. In fact, that section is within the municipal boundaries of Union Gap, so I presume perhaps Dr. Trende did not [40] want to cut through Union Gap and wanted to maintain that municipality, and that's why that happened. But as I show in Map 3A, that can totally be avoided, and that Union Gap can be kept whole and not cutting into the Yakima Nation Reservation.

Q Dr. Oskooii, thank you for your patience with me and for being here today.

MR. MULJI: And I will pass the witness.

THE COURT: Thanks, Mr. Mulji.

Okay. Who's got this witness? Also Mr. Holt. Okay.

MR. HOLT: I do, Your Honor.

THE COURT: Great.

MR. HOLT: Give me just a minute here to pick up my papers here.

CROSS-EXAMINATION

BY MR. HOLT:

Q Good morning, Dr. Oskooii. How are you?

A Good morning.

Q Nice to see you again.

A Good to see you again too.

Q So before we kind of work through the questions I wanted to talk to you about today, I'm just going to touch on a few things that you just barely covered with plaintiffs' counsel, if that's okay.

Now, you brought up the fact that Dr. Trende's illustrative map cracked community of interest by splitting off Toppenish and

* * *

[95] subdivision splits, correct?

A That's right. If there's a subdivision that has to be included at the boundary, then I guess that would be inexplicable. But I also know from having drawn a lot of maps that if you get one of these little bulges sticking out, in my experience, you try to also include precincts surrounding it, to keep those bulges from occurring.

Q In your initial report, you claim that plaintiffs' Map 3 shifted census blocks in 28 out of the state's 39 counties, correct?

A Yeah. That was a mistake.

Q And the remedial district in your map is labeled 15, not 14, right?

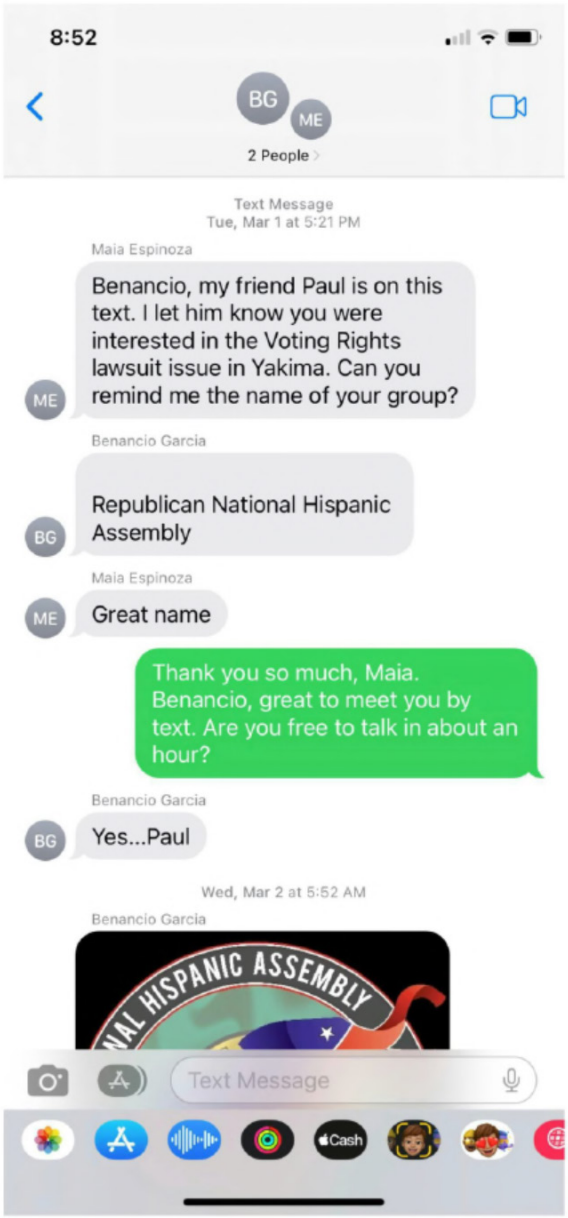
A I think that's right.

Q And this means the state Senate election in your remedial district will be held in an off year, where there's no presidential or gubernatorial election, correct?

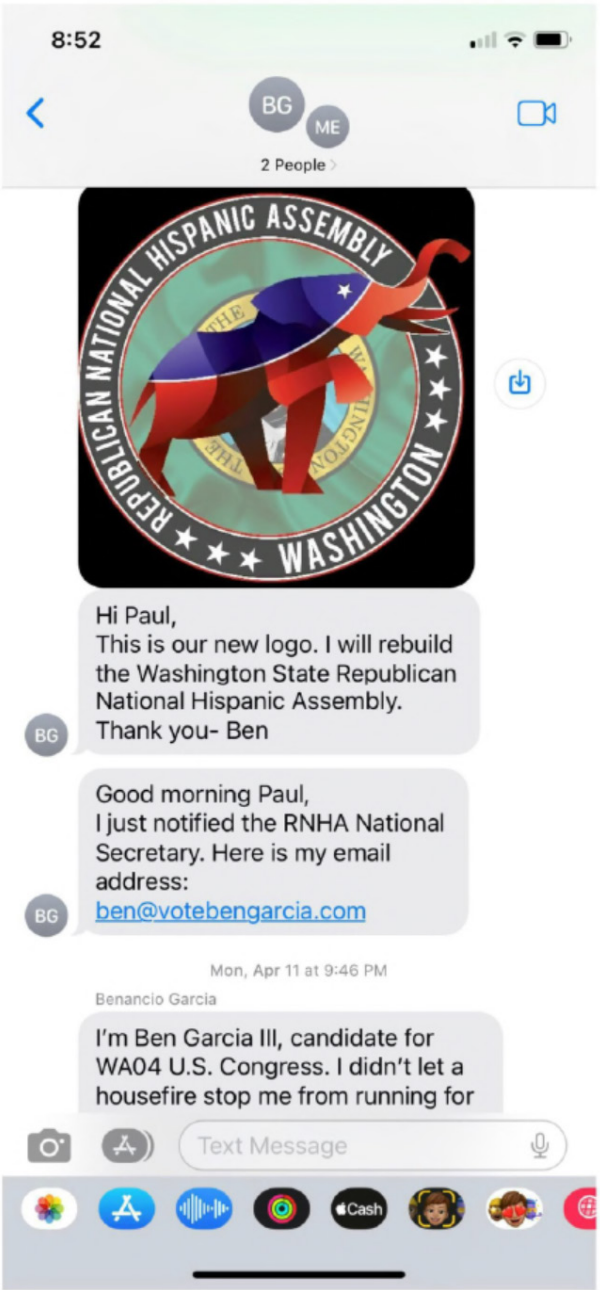
A Well, if that were—so I guess phrasing it as a remedial district, that would be true. I mean, the main goal with drawing that map was just to see if it were possible, like I said, to keep the interests of the Yakima Nation intact while still drawing a district that would perform. So if, as an actual remedial map, that were a problem, you could flip the numbers on it. But, yeah, it would occur in an off-year election as currently numbered.

* * *

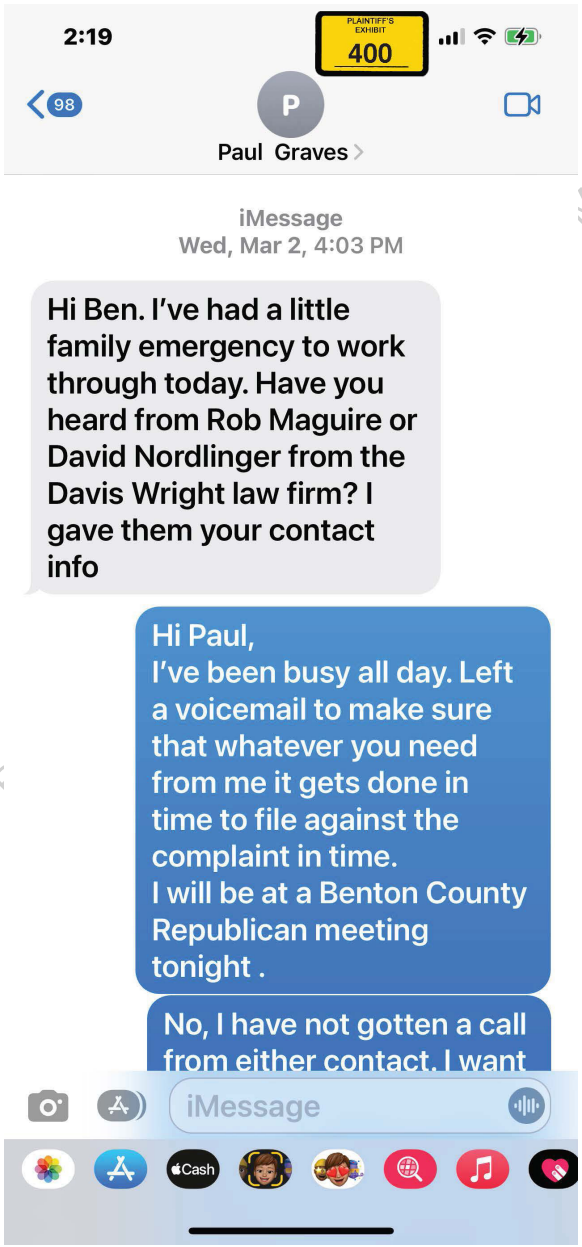
APPENDIX B — EX. 399 (TEXT THREAD WITH PAUL GRAVES, BENANCIO GARCIA, AND MAIA ESPINOZA, 3/1/22)



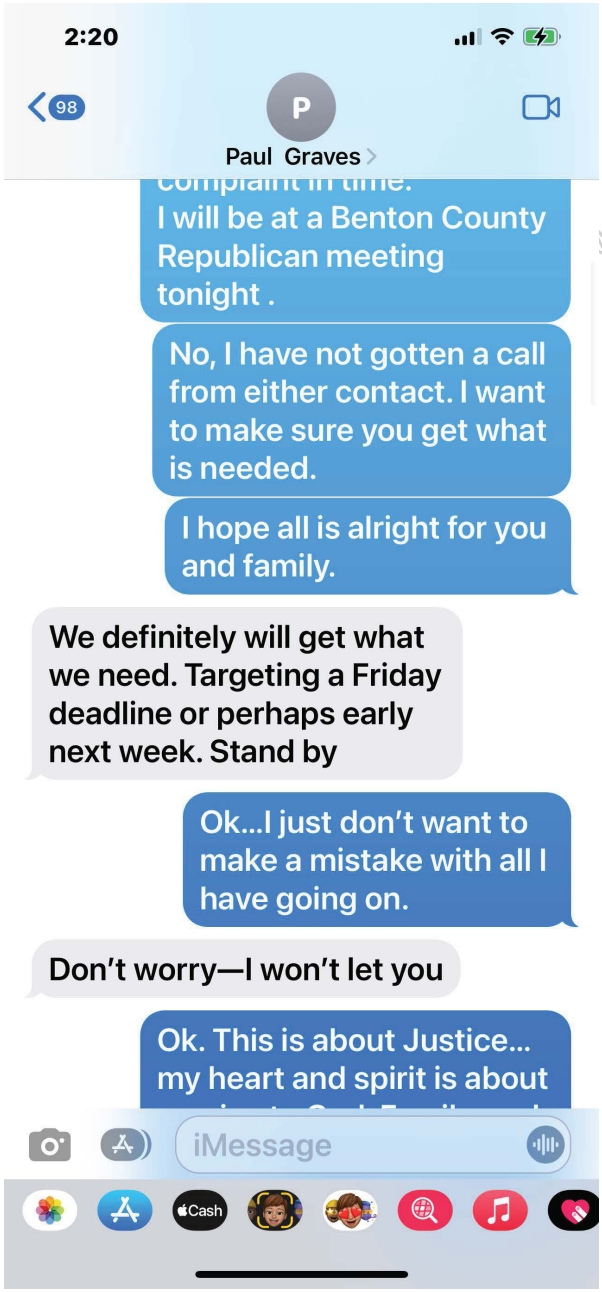
Appendix B


8:52
BG
ME
2 People
REPUBLICAN NATIONAL HISPANIC ASSEMBLY
WASHINGTON
Hi Paul,
This is our new logo. I will rebuild the Washington State Republican National Hispanic Assembly.
Thank you- Ben
BG
Good morning Paul,
I just notified the RNHA National Secretary. Here is my email address:
ben@votebengarcia.com
BG
Mon, Apr 11 at 9:46 PM
Benancio Garcia
I'm Ben Garcia III, candidate for WA04 U.S. Congress. I didn't let a housefire stop me from running for
Text Message
Cash

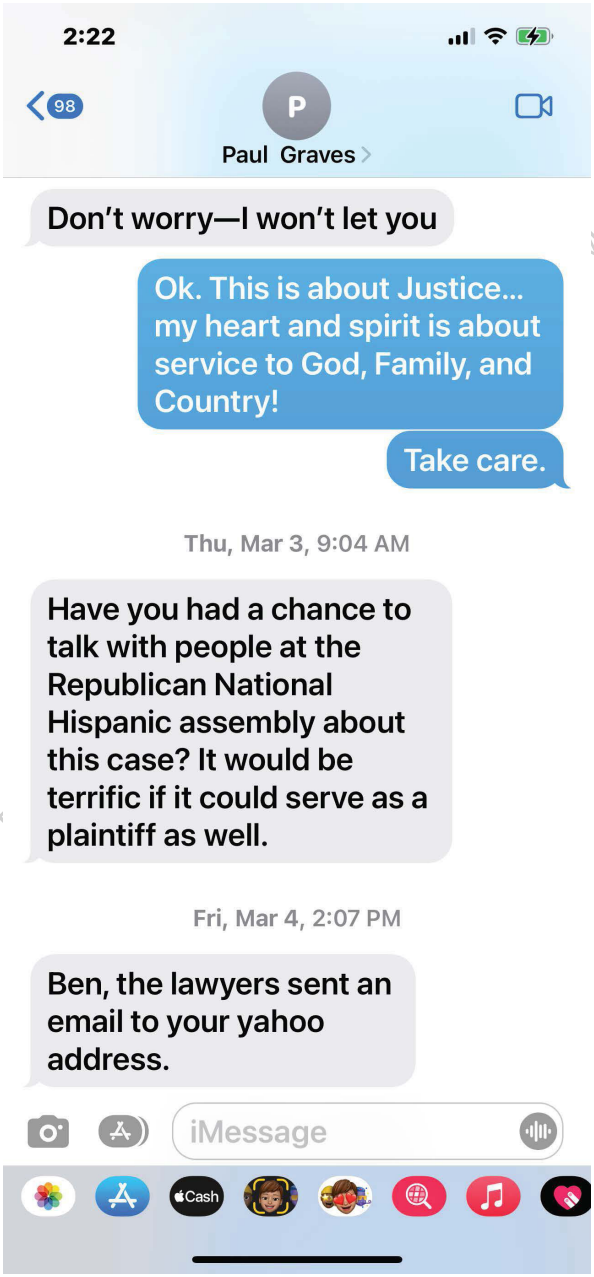
APPENDIX C — EX. 400 (TEXT THREAD WITH BENANCIO GARCIA AND PAUL GRAVES, 3/2/22)



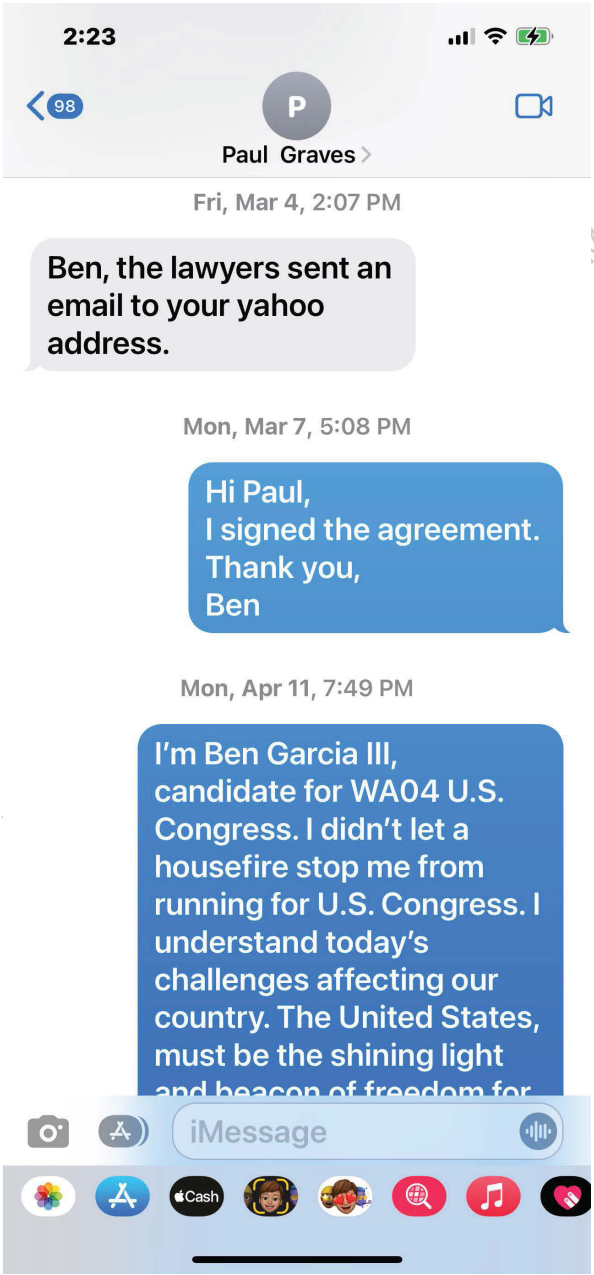
Appendix C


2:20
98
P
Paul Graves
I will be at a Benton County Republican meeting tonight .
No, I have not gotten a call from either contact. I want to make sure you get what is needed.
I hope all is alright for you and family.
We definitely will get what we need. Targeting a Friday deadline or perhaps early next week. Stand by
Ok...I just don't want to make a mistake with all I have going on.
Don't worry—I won't let you
Ok. This is about Justice... my heart and spirit is about
iMessage
Cash

Appendix C


2:22
98
P
Paul Graves
Don't worry—I won't let you
Ok. This is about Justice... my heart and spirit is about service to God, Family, and Country!
Take care.
Thu, Mar 3, 9:04 AM
Have you had a chance to talk with people at the Republican National Hispanic assembly about this case? It would be terrific if it could serve as a plaintiff as well.
Fri, Mar 4, 2:07 PM
Ben, the lawyers sent an email to your yahoo address.
iMessage
Cash

Appendix C


2:23
98
P
Paul Graves
Fri, Mar 4, 2:07 PM
Ben, the lawyers sent an email to your yahoo address.
Mon, Mar 7, 5:08 PM
Hi Paul,
I signed the agreement.
Thank you,
Ben
Mon, Apr 11, 7:49 PM
I'm Ben Garcia III, candidate for WA04 U.S. Congress. I didn't let a housefire stop me from running for U.S. Congress. I understand today's challenges affecting our country. The United States, must be the shining light
iMessage
Cash

APPENDIX D — EX. 401 (3/4-7/22 EMAIL THREAD WITH DREW STOKESBARY, ROB MAGUIRE, ADAM KINCAID, DAVID NORDLINGER, AND HARRY KORRELL RE CONNECT RE WASHINGTON STATE)

From:
Sent: Monday, March 7, 2022 8:17 AM PST
To: robmaguire@dwt.com
Subject: Re: Connect re Washington state

Drew Stokesbary
Stokesbary PLLC
1003 Main St., Suite 5
Sumner, WA 98390
www.stokesbarypllc.com

On Mar 7, 2022, at 7:48 AM, Maguire, Robert <robmaguire@dwt.com> wrote:

Rob Maguire
Davis Wright Tremaine LLP

Begin forwarded message:

From: "Maguire, Robert" <robmaguire@dwt.com>
Date: March 4, 2022 at 10:40:34 AM PST
To: Adam Kincaid <adam@thenrrt.org>
Cc: "Nordlinger, David" <DavidNordlinger@dwt.com>, harrykorrell@dwt.com
Subject: RE: Connect re Washington state

Hi Adam -

Appendix D

It's nice to meet you. Please let me know if you have a few minutes to talk today about Washington redistricting litigation plans. Thanks.

Rob Maguire | Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300 | Seattle, WA 98104
Tel: (206) 757-8094 | Fax: (206) 757-7094
Email: robmaguire@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York |
Portland | San Francisco | Seattle | Washington, D.C.

-----Original Message-----
From: Paul Graves <paul@enterprisewashington.org>
Sent: Friday, March 4, 2022 7:09 AM
To: Adam Kincaid <adam@thenrrt.org>;
Maguire, Robert <robmaguire@dwt.com>;
Nordlinger, David <DavidNordlinger@dwt.com>
Subject: Connect re Washington state

[EXTERNAL]

Rob, David, Adam,

Rob and David are lawyers at Davis Wright Tremaine here in Seattle, getting up to speed on the redistricting litigation. Adam runs the National Republican redistricting trust, and it's foundation, the Fair Lines America Foundation, which I believe can serve as a financing vehicle for this work. I'll let you three connect.

Appendix D

Paul Graves
President, Enterprise Washington
206-818-5607
Sent from my phone

APPENDIX E — EX. 405 (3/28-4/21/22 EMAIL THREAD WITH DREW STOKESBARY, ET AL. RE STATUS OF REDISTRICTING LITIGATION)

From:	Drew Stokesbary
Date:	April 21, 2022 9:04:53 AM (-07)
To:	John Braun; JT Wilcox; Jim Troyer; Caleb Heimlich
Subject:	Re: Status of Redistricting Litigation
Attachments:	Redistricting Litigation Memo.pdf;

Thanks everyone for the feedback on the slide deck, it was helpful.

Along similar lines, here's an updated "legal memo" I put together as well. The idea here was to create something a little more high-level than the slide deck, as well as a document that could be sent to interested parties as a standalone document (i.e., without me or somebody else needing to walk them through slide by slide). At least for now, it seems wise to keep CADF's logo off these materials given Paul's involvement in the Commission and CADF. Anyway, I've already had a couple folks ask for something like this so let me know if you have any thoughts or suggestions when you have a chance.

Thanks,
Drew

Drew Stokesbary
President
Citizen Action Defense Fund
1003 Main St, Suite 5
Sumner, WA 98390
P: (206) 486-0795
C: (206) 207-3920
E: drew@citizenactiondefense.org
W: www.citizenactiondefense.org

Appendix E

From: Drew Stokesbary <drew@citizenactiondefense.org>
Date: Tuesday, April 19, 2022 at 3:50 PM
To: John Braun <JohnBraun@braunnorthwest.com>,
JT Wilcox <jtwilcox111@gmail.com>,
Jim Troyer <jamestroyer@comcast.net>,
Caleb Heimlich <calebheimlich@wsrp.org>
Subject: Re: Status of Redistricting Litigation

Here's a slide deck I put together for prospective donors, etc. Let me know if you have any suggestions on conveying relevant info—always a challenge to provide the appropriate level of detail of complex issues for folks with little-to-know context.

Drew Stokesbary
President
Citizen Action Defense Fund
1003 Main St, Suite 5
Sumner, WA 98390
P: (206) 486-0795
C: (206) 207-3920
E: drew@citizenactiondefense.org
W: www.citizenactiondefense.org

From: Drew Stokesbary <drew@citizenactiondefense.org>
Date: Tuesday, April 19, 2022 at 10:12 AM
To: John Braun <JohnBraun@braunnorthwest.com>,
JT Wilcox <jtwilcox111@gmail.com>,
Jim Troyer <jamestroyer@comcast.net>,
Caleb Heimlich <calebheimlich@wsrp.org>
Subject: Re: Status of Redistricting Litigation

Appendix E

EXCITING NEWS: we found a national donor willing to match up to $250k for the litigation effort. In conjunction with this, Jason Torchinsky, a partner at Holtzman Vogel with extensive experience in redistricting litigation, would agree to join the case as co-counsel.

Of course, that means we still need to raise at least $250k locally. But hopefully the prospect of a matching donation and respected national counsel will provide sufficient donor impetus.

I've been putting together a short slide deck to present to prospective donors; should have that wrapped up in coming days.

Let me know if you have any thoughts or suggestions on how to proceed.

-Drew

Drew Stokesbary
President
Citizen Action Defense Fund
1003 Main St, Suite 5
Sumner, WA 98390
P: (206) 486-0795
C: (206) 207-3920
E: drew@citizenactiondefense.org
W: www.citizenactiondefense.org

Appendix E

From: Drew Stokesbary <drew@citizenactiondefense.org>
Date: Wednesday, April 13, 2022 at 9:08 AM
To: John Braun <JohnBraun@braunnorthwest.com>,
JT Wilcox <jtwilcox111@gmail.com>,
Jim Troyer <jamestroyer@comcast.net>,
Caleb Heimlich <calebheimlich@wsrp.org>
Subject: Re: Status of Redistricting Litigation

Preliminary Injunction is DENIED.

Billig and Jinkins are dismissed as defendants.

Reading rest of order now.

Drew Stokesbary
President
Citizen Action Defense Fund
1003 Main St, Suite 5
Sumner, WA 98390
P: (206) 486-0795
C: (206) 207-3920
E: drew@citizenactiondefense.org
W: www.citizenactiondefense.org

From: Drew Stokesbary <drew@citizenactiondefense.org>
Date: Tuesday, April 12, 2022 at 3:35 PM
To: John Braun <JohnBraun@braunnorthwest.com>,
JT Wilcox <jtwilcox111@gmail.com>,
Jim Troyer <jamestroyer@comcast.net>,
Caleb Heimlich <calebheimlich@wsrp.org>
Subject: Re: Status of Redistricting Litigation

Appendix E

Fair Lines America Foundation has set up a Washington affiliate that will pay 100% of its proceeds to litigation expenses here in WA. We can provide this form to interested donors, which has check and wiring info included.

They are a 501(c)(3) organization so contributions are tax-deductible. This may also be useful for certain trusts and family foundations.

Their only request is that, to safeguard their 501(c)(3) status, that we let them review any written solicitations we might want to send.

Sent from my iPhone

On Apr 12, 2022, at 1:05 PM, Drew Stokesbary <drew@citizenactiondefense.org> wrote:

Hearing on preliminary injunction just concluded.

No decision yet, but judge said he would have an opinion issued by close-of-business tomorrow, April 13.

I'm not sure what to predict at this point, as I'm pretty sure my own internal biases and my anxiety are drowning my ability to rationally read the judge.

The judge was definitely skeptical about the makeup of the defendants.

He also wanted to mostly focus on the timing issues. I think the unfortunate news there is that the AAG

representing Hobbs only gave *very* measured answers in response to timing concerns. She mostly pointed to precinct revisions that would need to take place, and seemed to say the window for counties to do that was still open for another week or two.

The judge did permit me to address some arguments for a few minutes (I wasn't timing, but it was probably more than 5 and less than 10). I got through about half of my arguments before he decided to move on (nobody else had a time limit, but of course, since the motion to intervene hasn't been granted yet, I'm not a party yet).

The one comment from the judge that concerns me deeply (and it was before I had a chance to speak) is when he said something along the lines of he agrees that "plaintiffs are likely to succeed on the merits of there being discrimination." It was kind of a throwaway line in context—it was in the middle of some other remarks in the middle of the hearing. But a "likelihood of success on the merits" is one of a few things you have to show to obtain a preliminary injunction, so I'm not sure if he was saying that he thinks plaintiffs are likely to succeed on the merits of this whole claim, or just with respect to the narrower issue of whether discrimination exists in Yakima.

So anyway, an 18 hour reprieve and then potentially another very furious appeal.

Drew Stokesbary
President
Citizen Action Defense Fund

Appendix E

1003 Main St, Suite 5
Sumner, WA 98390
P: (206) 486-0795
C: (206) 207-3920
E: drew@citizenactiondefense.org
W: www.citizenactiondefense.org

From: Drew Stokesbary <drew@citizenactiondefense.org>
Date: Friday, April 8, 2022 at 5:03 PM
To: John Braun <JohnBraun@braunnorthwest.com>, JT Wilcox <jtwilcox111@gmail.com>, Jim Troyer <jamestroyer@comcast.net>, Caleb Heimlich <calebheimlich@wsrp.org>
Subject: Re: Status of Redistricting Litigation

Here's a *very* high level "memo" describing the litigation that could potentially be shared with donors.

Let me know what you all think. It has as much to do with the political context as the legal issues. I can add or subtract things, and/or fashion it as more of a typical "legal memo" if it seems like that would be more effective.

Btw, please don't circulate quite yet, I need to run by my board first. But wanted to get your thoughts/suggestions in the meantime.

-Drew

Drew Stokesbary
President

Appendix E

Citizen Action Defense Fund
1003 Main St, Suite 5
Sumner, WA 98390
P: (206) 486-0795
C: (206) 207-3920
E: drew@citizenactiondefense.org
W: www.citizenactiondefense.org

From: Drew Stokesbary <drew@citizenactiondefense.org>
Date: Friday, April 8, 2022 at 1:17 AM
To: John Braun <JohnBraun@braunnorthwest.com>,
JT Wilcox <jtwilcox111@gmail.com>,
Jim Troyer <jamestroyer@comcast.net>,
Caleb Heimlich <calebheimlich@wsrp.org>
Subject: Re: Status of Redistricting Litigation

Another (quick) update—I filed the attached response to plaintiffs' motion for preliminary injunction with the Court just now. It's as exhaustive as possible given the space constraints (and, frankly, accomplishes what a team of AAGs should have done if their clients weren't acting like political hacks).

I don't expect any more updates this week. By Monday, plaintiffs have to file any response to my motion to intervene. I expect they'll do so but their arguments are likely weak.

Then of course, Tuesday is the preliminary injunction hearing.

-Drew

Appendix E

Drew Stokesbary
President
Citizen Action Defense Fund
1003 Main St, Suite 5
Sumner, WA 98390
P: (206) 486-0795
C: (206) 207-3920
E: drew@citizenactiondefense.org
W: www.citizenactiondefense.org

From: Drew Stokesbary <drew@citizenactiondefense.org>
Date: Tuesday, April 5, 2022 at 8:11 PM
To: John Braun <JohnBraun@braunnorthwest.com>, JT Wilcox <jtwilcox111@gmail.com>, Jim Troyer <jamestroyer@comcast.net>
Subject: Re: Status of Redistricting Litigation

I wanted to give a brief update:

As promised, last Tuesday I filed a Motion to Intervene in *Palmer v. Hobbs* (which you can read here).

Then on Friday, the Court scheduled a hearing on the Plaintiffs' Motion for Preliminary Injunction. That hearing will be next Tuesday, April 12 at 10:00 AM. As a reminder, the Plaintiffs have requested the Court (a) prohibit the Secretary of State from conducting any elections under the Commission's approved legislative maps and (b) order that plaintiffs' proposed legislative map be implemented for all elections, beginning with 2022 elections.

Appendix E

Although the judge has not ruled on my Motion to Intervene (and likely will not until next Friday, April 15 at the earliest), his assistant indicated that he would permit me to participate in the preliminary injunction hearing on Tuesday unless the parties strenuously object. I am also furiously working through a brief opposing preliminary injunction so that the judge will have a comprehensive written record contesting the merits of the plaintiffs' claims. I'm hoping to finish that by tomorrow.

In light of this, **we should begin fundraising urgently**:

- If the plaintiffs' request for injunction is *granted*, we would want to immediately appeal. (If we don't appeal, their map would create a safe Democratic district in Central WA for the 2022 elections, and jumble several incumbents between the 14th and 15th districts).

- If the plaintiffs' request for injunction is *denied*, they could appeal immediately and we would want to defend against that. (They have the right to an immediate appeal and other redistricting attorneys I've spoken with this week think the plaintiffs would be likely to do so.)

- Either way, we should be prepared to participate in an immediate appeal.

I am skeptical we can retain competent appellate counsel or co-counsel on a pro bono basis. I expect any firm, large or small, will need to see at least some fundraising

progress before agreeing to an engagement. I've made a small handful of preliminary inquiries, but I do not yet have any commitments. Just like how the statewide business community views the importance of a candidate's early in-district funding, it sounds like national donors to redistricting litigation prefer to see some level of in-state support before they get involved. I'm happy to help in fundraising however it's helpful, but I'm not sure I have the bandwidth, leverage or persuasiveness to do it alone.

Let me know if you have any questions, or any thoughts on next steps for this.

Best,
Drew

Drew Stokesbary
President
Citizen Action Defense Fund
1003 Main St, Suite 5
Sumner, WA 98390
P: (206) 486-0795
C: (206) 207-3920
E: drew@citizenactiondefense.org
W: www.citizenactiondefense.org

From: Drew Stokesbary <drew@citizenactiondefense.org>
Date: Monday, March 28, 2022 at 10:00 PM
To: John Braun <JohnBraun@braunnorthwest.com>,
JT Wilcox <jtwilcox111@gmail.com>,
Jim Troyer <jamestroyer@comcast.net>
Subject: Status of Redistricting Litigation

Appendix E

I'm not sure what you hear from the Legislature's attorneys, but here's a comprehensive update of where both cases are at and what my litigation plans are (please keep this confidential though):

Palmer v. Hobbs (original case, spearheaded by UCLA VRP)

- On Feb. 23, Billig and Jinkins filed a motion to be dismissed as plaintiffs. Honestly they're correct and the court should grant this, but the plaintiffs filed a brief opposing it and the court hasn't issued a ruling yet.

- On Feb. 25, Plaintiffs filed a motion for preliminary injunction.

    - Hobbs, as promised, didn't dispute any of plaintiffs' VRA claims, but he at least argued that the court shouldn't stop elections and that if his office doesn't have a new map by March 28 (today), then it's too late to implement a new map done this election cycle.

    - Jinkins and Billig didn't really contest any of plaintiffs' claims either. They at least explained to the court what all the applicable legal standards were, and 1-2 times did some light pushback on what plaintiffs' said the law was. But they didn't make any effort to apply the law to the facts in the case, much less suggest any shortcomings in plaintiffs' argument. The whole thing read like a memo from an intern/summer associate trying to summarize the law for their boss.

- Last Friday, plaintiffs filed their "reply" to the defendants' responses. For the first time, they presented an actual statewide proposal, which I've attached here. I haven't had a chance to look through it carefully yet (and I'm not even sure if they've provided it in a format other than a half-page PDF), but a cursory glance suggests they leave the westside districts intact and are just rejiggering Eastern WA boundaries.

- Briefing on that motion closed Friday, so the court could conceivably rule on it at any point now. For reasons described below, I'm hoping they wait a little longer.

- Last Thursday, Hobbs petitioned the court to require that plaintiffs add the State itself, the Redistricting Commission, and/or the individual Commissioners as parties to the lawsuit. I'm genuinely curious how plaintiffs respond to this, because I can't think how you could argue against this with a straight face. Briefing on this closes April 8, at which point the court could issue a ruling.

- Tomorrow morning (just awaiting one signature), I'll be filing a motion to intervene on behalf of four individuals—Jose Trevino, the mayor of Granger; Elpidia Saavedra, the mayor of Toppenish; Mel Campos, the brother of Paul Campos; and Alex Ybarra. I think it's a really strong motion and will frankly be shocked if the court denies it. But assuming they grant it, we'll have a great opportunity to engage in

the litigation and influence it in ways that the other parties won't. If plaintiffs ultimately fail, it will be because of us.

- I'm also working on a response brief opposing plaintiffs' motion for preliminary injunction, which hopefully I can finish before the court issues a ruling (as mentioned above, it became eligible for a ruling starting today). This will also be a strong brief. Assuming I can get it submitted before the preliminary injunction ruling, and that the injunction is denied, it will be obvious to everyone that our brief is what persuaded the court, not any of Hobbs/Billig/Jinkins' briefs.

- Once the motion to intervene is granted, I also plan to file a motion to dismiss the case. There are several grounds for this, most notably being that the VRA doesn't contain a private right of action. For years courts just assumed this, and only recently did it begin to get litigated. A federal court in Arkansas just issued a comprehensive opinion explaining why the VRA does not have a private right of action. Even if the court rejects the motion, there might still be an opportunity to appeal to the Ninth Circuit and then the Supreme Court and have it consolidated with that Arkansas case (which just got appealed to the Eighth Circuit). There's another argument too—that the VRA doesn't apply to redistricting. This is something Clarence Thomas has been writing in his concurrences/dissents for the past decade, and now Gorsuch is joining with him. While we won't win at the trial court with this argument, there's a low but nonzero chance if we get it

to the Supreme Court, the conservative bloc will adopt Thomas's arguments.

- Once these initial briefs (motion to intervene, opposition to motion for preliminary injunction and motion to dismiss) are filed in the next couple of weeks, the next steps will depend largely on how the court has ruled.

    - If we lose on the preliminary injunction, we can appeal to the Ninth Circuit, and will probably want to.

    - If we win on preliminary injunction (that is, it's denied), then plaintiffs can appeal to the Ninth Circuit but they probably won't want to.

    - If we win on motion to dismiss, the other side will surely appeal to the Ninth Circuit.

    - If we lose on motion to dismiss, we don't have a right to appeal to the Ninth Circuit (the district court could, but doesn't have to, let us), but we might want to try.

    - If both motions are denied, and nobody appeals, then the case will proceed. At that point, we'll likely need to hire a statistician and/or demographer to poke holes in plaintiffs' arguments.

    - At some point, we could try to move for summary judgement. We'd certainly have a sound basis to do

so, but entirely possible the court wouldn't agree. If that motion is granted, it would be appealed to the Ninth Circuit by the plaintiffs.

- If no motion for summary judgement is granted, then at some point (currently scheduled to be early January 2023), we'd have a trial, the results of which the loser would almost certainly want to appeal.

Garcia v. Hobbs (new case, I represent Garcia)

- I filed the complaint in this case about two weeks ago.

- Legal argument is that the LD15 was drawn primarily on account of race, which violates the 14th Amendment. The practical outcome, if successful, is an order to draw new maps in Yakima area that ignore race, which would let us re-draw LD15 in a way that is much safer.

- This case is kind of in a holding pattern now.

  - Because of how aggressively UCLA plaintiffs are pursuing the *Palmer* case, and how unaggressively the present defendants are defending the case, getting involved in *Palmer* is the more urgent priority.

  - Once we get the initial round of filings taken care of in *Palmer*, I can put together a motion for preliminary injunction in *Garcia* (but given how soon elections are coming, it's unlikely to be granted).

- A big value of having this case on the books, and complaint already written and filed, is that we could consolidate the two cases together if it's advantageous. At this point, that might happen for two reasons:

    - A federal law says that any case challenging the *constitutionality* of redistricting is entitled to be heard by a panel of 3 judges, and appeals from the panel go straight to the Supreme Court. *Palmer* is a statutory challenge, not a constitutional one, so we likely won't get a 3-judge panel. But if we consolidate the cases, we'd likely get the 3-judge panel meaning appeals go straight to the Supreme Court (which is better for us than going through the Ninth Circuit).

    - If at any point we think it would be better to have the Redistricting Commission involved in the *Palmer* case to defend the maps, the intervenors could countersue them on the same grounds as the *Garcia* complaint. Rather than asking the judge to do this (which Hobbs is doing), we could force it to happen.

To sum it all up, there's a relative flurry of motions and filings taking place now. Initial rulings on those motions could start to come in literally any day now. Depending on how those initial rulings go, there might be an immediate flurry of appellate work to do, or things might slow down as the case proceeds methodically to trial.

Appendix E

Happy to answer any questions (assuming they don't violate attorney-client privilege).

-Drew

Drew Stokesbary
President
Citizen Action Defense Fund
1003 Main St, Suite 5
Sumner, WA 98390
P: (206) 486-0795
C: (206) 207-3920
E: drew@citizenactiondefense.org
W: www.citizenactiondefense.org

APPENDIX F — EX. 437 (CITIZEN ACTION DEFENSE FUND ONE PAGER ON WASHINGTON REDISTRICTING LITIGATION)

CITIZEN ACTION DEFENSE FUND
Washington Redistricting Litigation

Factual Background

In November 2021, the Redistricting Commission approved new legislative district maps. During their deliberations, a left-wing advocacy group threatened litigation unless there was a majority-Latino district created in the Yakima Valley. As a result, the Commission reached a political compromise, drawing a Yakima-Pasco district (LD15) that was 50.02% Latino and 50.39% Republican.

Litigation Background

The group sued anyway, alleging the legislative maps violate the Voting Rights Act (VRA). They ask the court to impose a new map, beginning with the 2022 elections, that creates a 59% Democrat district in Central Washington.

The lawsuit only names three Democrat elected officials as defendants—the Secretary of State, Speaker of the House and Senate Majority Leader—none of whom were involved in drawing the original maps. The Secretary of State has notified the court he "takes no position" on the merits of the VRA claim and the Speaker and Majority Leader have moved to be dismissed as defendants. The Redistricting Commission has declined to intervene to defend their maps.

Citizen Action Defense Fund (CADF) is supporting a two-pronged legal effort. First, a group of Latino voters have filed a motion to intervene in the original case (*Palmer v. Hobbs*), where they are opposing plaintiffs' VRA claims and legal arguments. Second, another Latino voter has filed a separate lawsuit (*Garcia v. Hobbs*) alleging the 15th District is unconstitutional and should be redrawn on an entirely race-blind basis.

Legal Implications

At its absolute core, the *Palmer* case is about whether the VRA can used to mandate a particular partisan outcome. Because there is very little Ninth Circuit caselaw interpreting the VRA, failing to forcefully contest this lawsuit could result in troubling legal precedents that would apply to future Washington VRA cases.

Conversely, if *Palmer* is fully litigated, it could eventually present several legal questions to a friendly Supreme Court that would give the Court an opportunity to reshape how the VRA operates across the country. Most VRA cases involve challenges to politically-gerrymandered districts. But *Palmer* is unique in that it challenges a swing district produced through political compromise. Because there would be few equity concerns facing the Court, it could use the case as the basis to find that the VRA locks a private right of enforcement, doesn't apply to redistricting, or even is unconstitutionally vague.

Appendix F

Political Implications

If *Palmer* is successful, an entire legislative district will be "flipped" for the remainder of the decade, and perhaps beyond. If both lawsuits fail, LD15 will lean Republican for the near future but become increasingly difficult to hold. If *Garcia* is successful, LD15 could be redrawn to stay reliably Republican until 2030.

Next Steps

The Court is holding a preliminary injunction hearing in *Palmer* on April 12. Whether the injunction is granted or denied, the intervenors are preparing for an immediate appeal to the Ninth Circuit. It could take 1-2 years to fully resolve both cases, but the maps for the 2022 cycle will likely be finalized by mid-May.

The total litigation budget remains indeterminate, but is currently estimated to be at least $250,000. A significant amount of legal work has already been performed, but much work remains, including drafting motions, taking depositions and preparing appellate briefs. Co-counsel as well as a statistician and/or demographer will likely need to be retained.

About CADF

CADF is a nonprofit organization dedicated to promoting free markets, limited government and the constitutional rights of all Washingtonians through strategic litigation. It is led by Drew Stokesbary (President and Director) and Paul Graves and Dann Mead Smith (both Directors).

Appendix F

To protect their privacy, CADF does not publicly disclose its donors, nor are we legally required to. For tax-exposed donors, CADF expects to enter into a partnership with a 501(c)(3) tax-exempt organization to help fund this litigation.

To learn more, contact Drew Stokesbary at drew@citizenactiondefense.org.