

The Honorable Robert S. Lasnik

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

SUSAN SOTO PALMER, et. al.,

Plaintiffs,

v.

STEVEN HOBBS, et. al.,

Defendants,

and

JOSE TREVINO, ISMAEL CAMPOS, and
ALEX YBARRA,

Intervenor-Defendants.

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

Judge: Robert S. Lasnik

**PLAINTIFFS' REPLY IN
SUPPORT OF REMEDIAL
PROPOSALS**

INTRODUCTION

Plaintiffs present multiple options for remedying the VRA violation. Intervenor declined to submit *any* maps, and their kitchen-sink objections to Plaintiffs' proposals fail. This Court should place little weight on Dr. Trende's report, which is riddled with errors and ignores compliance with relevant redistricting criteria. The Court should adopt one of Plaintiffs' proposals, which provide "equal electoral opportunities for both white and Latino voters in the Yakima Valley regions," Dkt.230 at 2, respect Washington redistricting criteria, join communities of interest, and maintain the partisan balance of the legislative map.

ARGUMENT**I. Plaintiffs’ proposals provide Latino voters an equal opportunity to elect their preferred candidates.**

Plaintiffs’ proposals provide Yakima Valley Latino voters “real electoral opportunity.” *LULAC v. Perry*, 548 U.S. 399, 428 (2006); Dkts. 245; 245-2; 250 at 1. Intervenor do not seriously dispute this. Instead, they insist Plaintiffs’ proposals must meet a racial target and account for a fabricated “Nikki Torres Effect.” Dkt.252 at 4–5. Both arguments lack merit.

First, Intervenor’s fixation on the Hispanic citizen voting age population (HCVAP) of Plaintiffs’ proposals is wrong as a matter of law. *Id.* Dkt.at 5–6. At the remedial phase, VRA compliance is not about achieving a particular demographic target but “completely remed[ying] the prior dilution of minority voting strength and fully provid[ing] equal opportunity for minority citizens to participate and to elect candidates of their choice.” *Ketchum v. Byrne*, 740 F.2d 1398, 1412 (7th Cir. 1984) (quoting S. Rep. No. 97-417, at 31). Therefore, a remedial district need not be majority-Latino to comply with § 2 if an electoral performance analysis shows Latino voters have an equal opportunity to elect. *See Bartlett v. Strickland*, 556 U.S. 1, 23 (2009); *Singleton v. Merrill*, 582 F.Supp.3d 924, 952 n.7 (N.D. Ala. 2022) (defining a non-Black-majority “opportunity” district as one where a “‘meaningful number’ of non-Black voters often ‘join [] a politically cohesive Black community to elect’ the Black-preferred candidate”) (citing *Cooper v. Harris*, 581 U.S. 285, 301 (2017)); *Abbott v. Perez*, 138 S. Ct. 2305, 2331–33 (2018) (evaluating “opportunity districts” by reviewing past election performance); *LULAC*, 548 U.S. at 428–29

1 (same). It is undisputed that Plaintiffs’ plans provide such an opportunity.¹ Dkt.245-2; Dkt.250 at
2 1.

3 As parties who claimed an interest in this suit to *prevent* racial gerrymandering, it is curious
4 that Intervenors now demand remedial districts with a *higher* HCVAP. Dkt.252 at 5–6. Their
5 insistence for a racial target at this stage contradicts their longstanding position, as well as that of
6 their counsels’ other client, Mr. Garcia.

7
8 Regardless, performing remedial maps with higher HCVAP are available in the record.
9 This Court found several reasonably configured majority-HCVAP districts offered during the 2021
10 redistricting process that “would unify Latino communities in the Yakima Valley.” Dkt.218 at 9–
11 10. Drs. Collingwood and Barreto conducted performance analyses of these districts and
12 concluded they would provide Latino voters with an equal opportunity to elect. Tr.Ex.1 at 27–29;
13 Tr.Ex.214 at 18–19; Dkt.208 at 634:12–22.²

14
15 Next, Intervenors contend that Sen. Torres’s election results should be the metric for
16 assessing performance. But district-based elections “by nature...do not allow for a full
17 reconstruction of previous elections in the new proposed district boundaries.” Dkt.245-2 at 3. Here,
18 remedial versions of LD14 contain voters who did not vote in the LD15 2022 election. For that
19 reason, statewide elections—and multiple of them—are the appropriate measure as they can be
20 fully reconstituted in new districts.
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24 ¹ Intervenors claim Plaintiffs lack standing. Dkt.252 at 4. But, having provided multiple
25 performing remedial plans, Plaintiffs have more than met the “relatively modest” burden of
26 showing redressability. *M.S. v. Brown*, 902 F. 3d 1076, 1083 (9th Cir. 2018).

² These maps also disprove Intervenors’ unsubstantiated argument that “Plaintiffs are proposing
to replace Hispanic Republican voters with White Democratic voters.” Dkt.252 at 5.

1 Intervenor likewise repeat the contention this Court already rejected that Sen. Torres was
 2 Latino voters' candidate of choice. Dkt.218 at 11–12.³ Intervenor focus on the fact that Sen.
 3 Torres is Latina, but that does not make her the Latino candidate of choice. *LULAC*, 548 U.S. at
 4 438–41; *Ruiz v. City of Santa Maria*, 160 F.3d 543, 551 (9th Cir. 1998). More fundamentally, the
 5 “special circumstances” surrounding the 2022 LD15 election—the unexpected retirement of the
 6 longtime incumbent, a severely underfunded Latino-preferred candidate nominated as a write-in,
 7 and abysmally low Latino turnout—make that contest non-probative for evaluating Latino
 8 electoral opportunity. *Ruiz*, 160 F.3d at 557–58; *Thornburg v. Gingles*, 478 U.S. 30, 75–76 (1986);
 9 *see also* Tr.Ex.407; Tr.Ex.2; Dkt.245-2. Sen. Torres's election is not particularly probative and
 10 methodologically inappropriate for assessing remedial districts.⁴

11
 12 Intervenor fail to show that Plaintiffs' proposals do not fully cure the dilution of Latino
 13 voting strength in the Yakima Valley.

14
 15 **II. Plaintiffs' proposals respect Washington's redistricting criteria and minimize
 changes to surrounding districts.**

16 Plaintiffs' proposals (including adjusted versions submitted herewith) were drawn to
 17 comply with the criteria provided by Washington law, including population equality, compactness,
 18 contiguity, respect for political subdivisions, and unification of communities of interest. Ex.1 (Dr.
 19 Oksooi Rebuttal Report) ¶¶ 12–14. Dr. Trende largely ignores these criteria and does not dispute
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21
 22 ³ While Sen. Torres has an inspiring story, it is not probative of anything at issue in this case.
 23 Attempting to rehash this point, Intervenor filed an email from Sen. Torres. Dkt.252-1. The email,
 24 sent *during the remedial phase of this litigation* by an incumbent now seeking intervention, is non-
 probative hearsay.

25 ⁴ Intervenor make the perplexing claim that Sen. Torres is the Latino candidate of choice *and* that
 26 Plaintiffs have not shown redressability because Intervenor believe Sen. Torres would still prevail
 if she ran in the proposed districts. These dueling contentions make no sense.

1 that Plaintiffs’ plans are equally populated, have reasonably compact and contiguous district
2 shapes, respect communities of interest, and minimize splitting counties, cities, and precincts. *Id.*
3 ¶ 11–14, 31.

4 Instead, Intervenors complain that the proposals change too much. But their complaints
5 rest on faulty metrics. As the Secretary confirms, the proposals affect only 3 to 13 counties,
6 nowhere near “a majority” as Intervenors and Dr. Trende falsely claim. *Id.* ¶ 15. Nor do any of the
7 proposals alter LD49. *Id.* ¶ 26. And though even substantial changes to surrounding districts are
8 warranted, the impact here is demonstrably *small*. *Id.* ¶¶ 16–22. Core retention rates (which Dr.
9 Trende omits) show that no proposal affects more than 6% of the state population. *Id.* ¶¶ 23–28.
10 Maps 1–3 retain more than 94% of Washingtonians in the same district as the Enacted Plan, Map
11 4 more than 95%, and Map 5 more than 97%. *Id.*; *Singleton*, 2023 WL 6567895, at *7 (N.D. Ala.
12 Oct. 5, 2023) (accepting remedy with 86.9% core retention). The data belies Intervenors’ hysterics.

13 Intervenors also claim that Maps 1–4 improperly add trans-Cascades districts. Untrue.
14 Population equality demands that *at least* one district cross the Cascades. In the Enacted Plan, it is
15 LD12. To accommodate the new remedial district, Maps 1 and 3 necessarily add another trans-
16 Cascades district (LD17) in the Skamania and Klickitat area, where, as Intervenors concede, the
17 Legislature has frequently drawn such a district. Dkt.252 at 6. Maps 2 and 4 offer a configuration
18 of surrounding districts that adds a third reasonably configured trans-Cascades district (LD13).
19 Plaintiffs’ Map 5 includes only one.

20 **III. Plaintiffs’ proposals join recognized communities of interest.**

21 Intervenors’ assertion that the Latino communities in Plaintiffs’ remedial districts are “far-
22 flung” contradicts this Court’s finding, based on extensive testimony and evidence, that Yakima,
23 Pasco, and the “other, smaller, Latino population centers” between “form a community of interest
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1 based on more than just race.” Dkt.218 at 10–11, 16–17. Dr. Trende’s assertion regarding
2 “compactness of population” is unsubstantiated and simply parrots the rejected claims of
3 Intervenors’ trial expert.⁵ *Id.* at 11 n.7. His own report confirms that Plaintiffs’ plans join
4 communities of interest. Ex.1 ¶ 42. The unification of these communities also complies with RCW
5 44.05.090(2)(a). Regardless, Map 5 provides an option excluding Pasco.

6
7 Plaintiffs’ proposals are well aligned with public comments. Dkt.252 at 12. Each proposal
8 creates a district that provides Yakima Valley Latinos equal opportunity to elect preferred
9 candidates, which the community vigorously advocated for during the map-drawing process.
10 Tr.Exs. 94, 97, 189, 252, 328, 342. Plaintiffs’ remedial districts even resemble map proposals
11 submitted to the Commission as public comment. Tr.Ex.342.

12 Plaintiffs’ proposals also respect the Yakama Nation. Each map keeps the Reservation
13 intact in one legislative district. Maps 1 and 2 combine the Reservation with some Yakama trust
14 lands. Dkt.245-1 ¶¶ 16, 23. Maps 3 and 4 combine the Reservation with all known trust lands and
15 fishing villages, based on available Census data. *Id.* ¶¶ 30, 37. Intervenors claim that Maps 3 and
16 4 exclude certain off-reservation Yakama lands, Dkt.252 at 12, but provide no information about
17 the allegedly excluded locations. Moreover, regarding the Commissioners’ four initial maps, the
18 Tribal Council stated that “every proposed...map [was] consistent with [their] important request”
19 “for single-district representation of the Yakama Reservation...and adjacent Yakama
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23 ⁵ Courts have placed little weight on Dr. Trende’s redistricting analysis. *See, e.g. S.C. State Conf.*
24 *of NAACP v. Alexander*, 649 F. Supp. 3d 177, 193 (D.S.C. 2023) (“The Court found Trende’s
25 testimony and reports...unpersuasive.”); *Matter of 2022 Legislative Districting of State*, 282 A.3d
26 147, 185–86 (Md. Ct. App. 2022) (“Given the superficial quality of his analysis and the lack of
any opinion by Mr. Trende...we agree that it is entitled to little weight.”); *Graham v. Adams*, No.
22-CI-00047 at *43 (Ky. Cir. Ct. Nov. 10, 2022) (“[T]he Court finds Mr. Trende’s testimony
[regarding historic parings and communities of interest] self-serving and unreliable.”).

1 communities.” Dkt.252-6 at 6. Plaintiffs’ proposals encompass as much as or more of the off-
2 reservation Yakama lands as Commissioners Sims’ proposal. Tr.Ex.155. Walkinshaw’s proposal
3 and the *Enacted Plan* also excluded Skamania County. Tr.Exs. 156, 420.

4 **IV. Plaintiffs’ proposals avoid extraneous incumbent displacement and maintain**
5 **partisan performance.**

6 Redrawing LD15 to remedy the VRA violation naturally creates a ripple effect resulting in
7 changes elsewhere. Ex.1 ¶¶ 20–21, 28. Dr. Oskooii minimized these surrounding changes and
8 offered several different options. *Id.* ¶ 30. In response, Intervenors complain that the changes and
9 displacement of some incumbents in Plaintiffs’ proposals is evidence of a partisan plot. But these
10 changes are expected and explainable, the partisan shifts are insignificant, and Plaintiffs’ updated
11 plans largely eliminate incumbent displacement.
12

13 Dr. Oskooii drew Maps 1–5 first according to Washington’s redistricting criteria and then
14 adjusted districts where possible to avoid incumbent displacement based only on publicly-
15 available data. *Id.* ¶¶ 61–62. After receiving updated data from the Secretary’s office, Dr. Oskooii
16 made minor adjustments to the districts addressing nearly every incumbent displacement identified
17 by Mr. Pharris and Dr. Trende beyond the LD14/15 legislators naturally impacted most due to the
18 VRA violation. *Id.* ¶¶ 63–66.
19

20 Intervenors and the Secretary identified ten incumbents affected by Plaintiffs’ proposals.
21 Dkt.252 at 10; Dkt.248 at 2–4. Incumbent protection is not one of Washington’s redistricting
22 criteria, nor does it trump compliance with federal law. Regardless, Plaintiffs’ Maps 1A–5A
23 address Intervenors’ concerns about the four incumbents in LDs 8, 31, and 13. In all of Maps 1A–
24 5A, Rep. Barnard resides in LD8, and Sen. Fortunato and Rep. Stokesbary reside in LD31. In Maps
25 2A and 4A, Sen. Hawkins remains in LD12; he is in LD7 in Maps 1A and 3A, as a result of
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1 balancing other considerations like limiting the westward extension of LD13. Ex.1 ¶¶ 68–123.
 2 Map 5A places Rep. Corry in LD15, eliminating his pairing with LD13’s Rep. Ybarra. *Id.* ¶ 66.

3 Intervenor also gripe that Plaintiffs’ maps are evidence of “political games,” Dkt.252 at
 4 8–9, relying on Dr. Trende’s mistaken view of minute changes as meaningful partisan impact. But
 5 no proposal results in a gain or loss for *either party* beyond LD14/15, and the overall partisan skew
 6 of the map remains Republican, like the Enacted Plan. Ex.1 ¶¶ 43–60. Intervenor’s handwringing
 7 that no Democratic legislators were affected by Plaintiffs’ remedial maps is wrong—a Democratic
 8 district *was* negatively affected—and irrelevant. *Id.* ¶ 51. Since nearly every legislator surrounding
 9 LD14/15 is Republican, Republican districts are necessarily impacted. *Id.* ¶ 8. But *all* the partisan
 10 effects outside LD14/15 are marginal and inconsequential, and Dr. Trende’s *own metrics* show
 11 this. *Id.* ¶¶ 45–53. Intervenor may be blinkered by partisanship, but Plaintiffs are not.

12 CONCLUSION

13 Plaintiffs respectfully ask this Court to adopt one of Plaintiffs’ proposals, with a preference
 14 for a plan connecting alike communities in Yakima and Pasco, that provides Latino voters with an
 15 equal opportunity to elect.
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 19 Dated: January 5, 2024

Respectfully submitted,

By: /s/ Aseem Mulji

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CERTIFICATE OF SERVICE

I certify that all counsel of record were served a copy of the foregoing this 5th day of January 2024, via the Court's CM/ECF system.

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