

The Honorable Robert S. Lasnik
The Honorable David G. Estudillo
The Honorable Lawrence Van Dyke

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

BENANCIO GARCIA III,

Plaintiff,

v.

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

Defendants.

Case No.: 3:22-cv-5152-RSL-DGE-LJCV

PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR:
March 31, 2023

ORAL ARGUMENT REQUESTED

Plaintiff Benancio Garcia III respectfully moves the Court for summary judgment in the above-captioned matter pursuant to Fed. R. Civ. P. 56. In accordance with Local Rules W.D. Wash. LCR 56.1, a statement of material facts and memorandum in support of this motion are set forth below.

INTRODUCTION

The Washington State Redistricting Commission should well know that which, by now, should be axiomatic in American governance: “The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.” *Cf. Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007) (plurality op.). Distressingly, far from learning the lessons of the past, the Commission decided that the Hispanic citizens of the Yakima Valley were a bargaining chip in a game of brinksmanship. Fortunately for the people of Washington, the U.S. Constitution stands as a bulwark against the categorization of people due to their race or ethnicity.

1 Here, it is quite plain that the Washington State Redistricting Commission (the “Commission”)
 2 sought to create Legislative District 15 with a racial target of *just* over 50% Hispanic Citizen
 3 Voting Age Population. It did this with no compelling justification because the Commissioners
 4 believed that either the Voting Rights Act didn’t apply, or that the created district was either
 5 insufficient to elect a Hispanic candidate of choice or would eventually elect a candidate of choice
 6 over time, or some combination thereof. Because race certainly predominated in the creation of
 7 Legislative District 15 and the Commission had no sufficient justification for doing so, summary
 8 judgment should issue for Plaintiff Garcia.

9 STATEMENT OF MATERIAL FACTS

10 A. Redistricting in Washington.

11 The Washington State Constitution directs that “[i]n January of each year ending in one, a
 12 commission shall be established to provide for the redistricting of state legislative and
 13 congressional districts.” WASH. CONST. art. II, § 43(1); *see also* RCW 44.05.030. The Commission
 14 is composed of five members. WASH. CONST. art. II, § 43(2); *see also* RCW 44.05.030. Each of
 15 the “leader[s] of the two largest political parties in each house of the legislature . . . appoint one
 16 voting member.” *Id.* These four voting members select a fifth, nonvoting member to serve as the
 17 Commission’s chairperson. *Id.*

18 The Washington Constitution requires that “[e]ach district . . . contain a population . . . as
 19 nearly equal as practicable to the population of any other district” and that “[t]o the extent
 20 reasonable, each district . . . contain contiguous territory, . . . be compact and convenient, and . . .
 21 be separated from adjoining districts by natural geographic barriers, artificial barriers, or political
 22 subdivision boundaries.” WASH. CONST. art. II, § 43(5). Additionally, the Commission’s
 23 redistricting plan “shall not be drawn purposely to favor or discriminate against any political party
 24 or group.” *Id.* The plan must also, “insofar as practical,” follow certain other traditional districting
 25 principles, including that “[d]istrict lines should be drawn so as to coincide with the boundaries of
 26 local political subdivisions and areas recognized as communities of interest[.]” and that “[t]he
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1 number of counties and municipalities divided among more than one district should be as small as
2 possible.” RCW 44.05.090.

3 For a redistricting plan to be adopted, it must be approved by “[a]t least three of the voting
4 members” of the Commission. WASH. CONST. art. II, § 43(6). The Commission is required to
5 “complete redistricting . . . no later than November 15th of each year ending in one.” *Id.*; *see also*
6 RCW 44.05.100. “Upon approval of a redistricting plan,” the Commission “shall submit the plan
7 to the legislature[,]” which may amend the Commission’s plan within the first thirty days of the
8 next regular or special legislative session by “an affirmative vote in each house of two-thirds of
9 the members elected or appointed thereto.” RCW 44.05.100. The Legislature’s amendment
10 authority is limited, as it “may not include more than two percent of the population of any
11 legislative or congressional district.” *Id.* After such 30-day period, “[t]he plan approved by the
12 commission, with any amendment approved by the legislature, shall be final . . . and shall constitute
13 the districting law applicable to this state for legislative and congressional elections, beginning
14 with the next elections held in the year ending in two.” *Id.*

15 Following the passage of a map, the Commission is required to cease operations by July
16 1st. RCW 44.05.110. If needed, the legislature may “adopt legislation reconvening the commission
17 for purposes of modifying the redistricting plan.” RCW 44.05.120(1).

18 **B. History of Redistricting in the Yakima Valley.**

19 Over the past 90 years, what is now Legislative District 15¹ has changed during each round
20 of redistricting, but never as drastically as between 2012 and 2022. Historically, the District has
21 covered a substantial portion of Yakima County. (From 1982 through 2001, it also included
22 portions of neighboring counties, but never as far northeast as Othello or as far east as Pasco). *See*
23 Dkt. # 21 ¶ 28; Dkt. # 24 ¶ 28; *see generally* STATE OF WASH., MEMBERS OF THE LEGISLATURE
24 1889-2019, 173-91 (2019). Over the years, the legislative district boundaries that included the
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26 ¹ At different times in the process of both drafting maps and in negotiating the final enacted maps, the Commissioners
27 referred to the now majority HCVAP 15th District as either the 15th or 14th District. In the end, the final map primarily
included the Yakima Valley in the current 15th District. As such, as the Court considers evidence in this matter, it
should take notice that some exhibits may refer to the Yakima Valley legislative district as either the 14th or the 15th.

1 Yakima Valley changed and various cities and counties were included in the district—often only
2 including a portion of Yakima County in the district. *See* Dkt. # 21 ¶¶ 28-36; Dkt. # 24 ¶¶ 28-36;
3 *see generally* Ex. 33, (173-91).

4 **C. The 2021 Redistricting Process.**

5 On December 10, 2020, the Speaker of the Washington House of Representatives
6 announced the appointment of April Sims as a Commissioner representing the House Democratic
7 Caucus and the Senate Majority Leader announced the appointment of Brady Piñero Walkinshaw
8 as a Commissioner representing the Senate Democratic Caucus. Dkt. # 21 ¶ 37; Dkt. # 24 ¶ 37. On
9 January 15, 2021, the Senate Minority Leader announced the appointment of Joe Fain as a
10 Commissioner representing the Senate Republican Caucus and the House Minority Leader
11 announced the appointment of Paul Graves as a Commissioner Representing the House Republican
12 Caucus. Dkt. # 21 ¶ 38; Dkt. # 24 ¶ 38. On January 30, 2021, the four voting Commissioners
13 appointed Sarah Augustine as the nonvoting, fifth member and Chair of the Commission. Dkt. #
14 21 ¶ 39; Dkt. # 24 ¶ 39.

15 Commissioners Sims and Graves were primarily responsible for negotiating and drafting
16 the legislative maps. Fain Dep., (66:8-12, 187:23-25) (Ex. 6); Walkinshaw Dep., (52:17-53:4) (Ex.
17 3); Graves Dep., (290:12-23) (Ex. 1).

18 Between February and November 2021, the Commission held Special Business Meetings,
19 Regular Business Meetings, and Public Outreach Meetings. Dkt. # 21 ¶ 40; Dkt. # 24 ¶ 40.

20 On September 21, 2021, each of the four voting Commissioners released a proposed
21 legislative district map to the public. Dkt. # 21 ¶ 41; Dkt. # 24 ¶ 41. No Commissioner proposed a
22 version of Legislative District 15 that resembled the district as drawn by the Commission’s final
23 redistricting plan. *See* Washington State Redistricting Commission, Proposed Legislative Maps:
24 Fain (Ex. 25), Graves, (Ex. 26), Sims Original (Ex. 27), Walkinshaw Original (Ex. 29). No
25 proposal, for example, contained the cities of Pasco or Othello, and none contained a majority
26 Hispanic Citizen Voting Age Population (“HCVAP”). Dkt. # 21 ¶ 42; Dkt. # 24 ¶ 42.

27

1 The map of Legislative District 15 initially proposed by Commissioner Sims combined the
2 Yakama Indian Reservation with parts of Yakima and communities along Interstate 82 to
3 Grandview. Commissioner Sims stated that her map “recognizes the responsibility to create
4 districts that provide fair representation for communities of interest” and that “[m]aintaining and
5 creating communities of interest” and “[c]entering and engaging communities that have been
6 historically underrepresented” were “values guid[ing]” her efforts. *See* Exs. 25-30; Dkt. # 21 ¶ 43;
7 Dkt. # 24 ¶ 43.

8 The map of Legislative District 15 initially proposed by Commissioner Walkinshaw
9 merged cities around Yakima into a district that stretched north beyond Ellensburg and south to
10 the Columbia River. Commissioner Walkinshaw stated his goals were to “[m]aintain and unite
11 communities of interest and reduce city splits” and “prioritize[e] the needs of . . . historically
12 underrepresented communities.” His plan also “[c]reate[d] a majority-Hispanic/Latino district” in
13 the neighboring Legislative District 14, which was “55.5% [Hispanic/Latino] by Voting Age
14 Population (VAP)” and “65.5% people-of-color by VAP.” Dkt. # 21 ¶ 44; Dkt. # 24 ¶ 44; *see also*
15 (Ex. 29).

16 The map of Legislative District 15 as proposed by Commissioner Fain included the City
17 of Yakima and consisted of the eastern third of Yakima County. Commissioner Fain “place[d]
18 existing school district boundaries at the cornerstone of his legislative framework.” His plan also
19 “create[d] seven majority-minority districts statewide, and one additional majority-minority
20 citizen voting age population (CVAP) district.” Dkt. # 21 ¶ 44; Dkt. # 24 ¶ 44; *see also* (Ex. 25).

21 The map of Legislative District 15 as proposed by Commissioner Graves combined the
22 northeastern portion of Yakima County, including the cities along Interstate 82, with most of
23 Benton County apart from Richland and Kennewick. Commissioner Graves’s plan “focuse[d] on
24 communities of interest and is not drawn to favor either party or incumbents” and featured eight
25 “majority-minority” districts. Dkt. # 21 ¶ 44; Dkt. # 24 ¶ 44; *see also* (Ex. 26).

1 On October 19, 2021, the Washington State Senate Democratic Caucus circulated a
2 presentation by Dr. Matt Barreto, a professor of political science and Chicana/o studies at UCLA
3 and co-founder of the UCLA Voting Rights Project. *See* Ex. 18; Dkt. # 21 ¶ 47; Dkt. # 24 ¶ 47.

4 Dr. Barreto was hired by the Washington Senate Democratic Caucus, not by the
5 Commission, the State of Washington, or the Legislature. Graves Dep., (275:7–276:4) (Ex. 1);
6 Sims Dep., (242:11-15) (Ex. 2). The presentation argued that, to comply with Section 2 of the
7 Voting Right Act, a majority HCVAP district in the Yakima Valley was required. *See* Ex. 18. The
8 presentation included an analysis of voting patterns for just two statewide general elections, the
9 2012 U.S. Senate race between Maria Cantwell and Michael Baumgartner and the 2020 Governor
10 race between Jay Inslee and Loren Culp. *See id.* Neither analysis included a Hispanic candidate.
11 *See id.* The presentation did not include analysis of voting patterns in primary elections, or any
12 other analysis exploring whether voting patterns could be explained by partisanship, rather than
13 race. *See id.* Additionally, the presentation also did not consider or suggest any race-neutral
14 alternatives despite showing that the districts initially proposed by Commissioners Sims and
15 Walkinshaw would have voted for the Latino bloc’s preferred candidate over the majority bloc’s
16 preferred candidate in the 2020 President/Vice President race. *See id.* Only two claimed “VRA
17 Compliant” legislative district options were presented. One district contained a HCVAP of
18 approximately 60% and the other contained a HCVAP of approximately 52%, without any
19 explanation for why the different thresholds were chosen. *See id.*

20 Subsequently, Commissioners Fain and Graves and the Washington State Republican Party
21 commissioned a VRA analysis by a Washington law firm, Davis Wright Tremaine, that determined
22 a VRA district was not required in the Yakima Valley. Ex. 1 (87:8-88:10); DWT Memo. (Ex. 17).

23 Following the release of the Barreto presentation, Commissioner Walkinshaw issued a
24 statement on October 21, 2021, two days after the presentation’s release, stating that he and
25 Commissioner Sims “will be releasing new statewide legislative maps early next week.” *See* Dkt.
26 # 21 ¶ 53; Dkt. # 24 ¶ 53. Commissioner Walkinshaw also stated that “as the first ever Latino
27 commissioner, it has been extremely important for me to lift up and elevate Hispanic voters, and

1 undo patterns of racially polarized voting, particularly in the Yakima Valley.” Dkt. # 21 ¶ 54; Dkt.
2 # 24 ¶ 54.

3 On October 25, 2021, Commissioners Sims and Walkinshaw released revised legislative
4 plans, both of which incorporated the “Yakama Reservation” district option from Dr. Barreto’s
5 presentation. *See* Dkt. # 21 ¶ 55; Dkt. # 24 ¶ 55.

6 On October 26, 2021, less than three weeks before the Commission’s statutory deadline,
7 Washington State Senate Democrats issued a press release holding out Dr. Barreto’s presentation
8 as “definitive,” stipulating that “the final adopted map must include a majority-Hispanic district in
9 the Yakima Valley.” *See* Dkt. # 21 ¶ 56; Dkt. # 24 ¶ 56.

10 Shortly before midnight on November 15, 2021, the Commission “voted *unanimously* to
11 approve a legislative redistricting plan.” Ex. 12 (emphasis added); Dkt. # 21 ¶¶ 57-59; Dkt. # 24
12 ¶¶ 57-59. And, shortly after midnight on November 16, 2021, the Commission submitted “a formal
13 resolution adopting the redistricting plan” and “a letter transmitting the plan” to the Legislature.
14 *Id.* This process was deemed to be compliant with Washington law by the Washington Supreme
15 Court. *Order re: Wash. State Redistricting Comm’n’s Letter*, 504 P.3d 795 (Wash. 2021) (Ex. 12).

16 Subsequently, the Legislature approved minor adjustments to the Commission’s final plan.
17 *See* Dkt. # 21 ¶¶ 57-59; Dkt. # 24 ¶¶ 57-59. The redistricting plan approved by the Commission,
18 together with the Legislature’s amendments, constitutes Washington state’s districting law for
19 legislative elections, beginning with the upcoming 2022 elections. *See* WASH. CONST. art. II, §
20 43(7); RCW 44.05.100(3); *see also* Ex. 12 at 4.

21 The map of the new Legislative District 15 (“LD-15”) as defined by the Commission’s
22 approved plan is available online at: <https://www.redistricting.wa.gov/district-maps-handouts> and
23 attached hereto as Ex. 24. Elections have already taken place under the new legislative maps,
24 whereupon, in LD-15, Nikki Torres, a Hispanic, female Republican prevailed over her Democratic
25 opponent in the State Senate race by approximately 68% to 32%. 2022 Washington Senate Election
26 Results (Ex. 23).

1 **LEGAL STANDARD**

2 By virtue of the Equal Protection Clause, the State may not, “without sufficient
3 justification, ... ‘separat[e] its citizens into different voting districts on the basis of race.’”
4 *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 187 (2017) (quoting *Miller v. Johnson*,
5 515 U.S. 900, 911 (1995)). Doing so not only degrades individuals by subjecting them “to a racial
6 classification,” but also forces them into “represent[ation] by a legislator who believes his primary
7 obligation is to represent only the members of a particular racial group.” *Ala. Legis. Black Caucus*
8 *v. Alabama*, 575 U.S. 254, 263 (2015). The Supreme Court has “consistently described a claim of
9 racial gerrymandering as a claim that race was improperly used in the drawing of boundaries of
10 one or more *specific electoral districts*.” *Bethune-Hill*, 580 U.S. at 191 (emphasis in original)
11 (quoting *Ala. Legis. Black Caucus*, 575 U.S. at 262–63).

12 If “race was the predominant factor motivating the legislature’s decision to place a
13 significant number of voters within or without a particular district[.]” *id.* at 187 (quoting *Miller*,
14 515 U.S. at 916), the district must be stricken unless that placement was necessitated by a
15 compelling state interest. The Supreme Court has “long assumed that complying with the VRA is
16 a compelling interest.” *Cooper v. Harris*, 581 U.S. 285, 300 (2017).

17 Where, as here, a “movant shows that there is no genuine dispute as to any material fact,”
18 then “the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c)(1). “[T]he
19 existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly
20 supported motion for summary judgment; the requirement is that there be no *genuine* issue of
21 *material fact*.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). “Only disputes over
22 facts that might affect the outcome of the suit under governing law will properly preclude summary
23 judgment.” *Id.* at 248. An issue of material fact is “genuine” “if the evidence is such that a
24 reasonable [fact finder] could return a verdict for the nonmoving party.” *Id.* Here, the record is
25 clear: Race predominated in the Commission’s deliberations concerning LD-15, and Plaintiff is
26 therefore entitled to judgment as a matter of law.

ARGUMENT

The Supreme Court has long held that “all laws” classifying “citizens on the basis of race, including racially gerrymandered districting schemes, are constitutionally suspect and must be strictly scrutinized.” *Cromartie*, 526 U.S. at 546 (citing *Shaw v. Hunt*, 517 U.S. 899, 904 (1996)); *Miller*, 515 U.S. at 904–05. To carry a claim of racial gerrymandering (sometimes called a “*Shaw* claim”), the Supreme Court’s precedents “call for a two-step analysis.” *Cooper*, 581 U.S. at 285; *see also Shaw v. Reno*, 509 U.S. 630 (1993). In the first step a plaintiff must show “that race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a district.” *Cooper*, 581 U.S. at 291 (quoting *Miller*, 515 U.S. at 916). If racial considerations did predominate, then the burden shifts to the State to “prove that its race-based sorting of voters serves a ‘compelling interest’ and is ‘narrowly tailored’ to that end.” *Id.* (quoting *Bethune-Hill*, 580 U.S. at 193). Here, the State fails at both steps.

A. The State Intentionally Assigned Citizens to Legislative District 15 Based on Race.

To show predominance, a plaintiff may either use “circumstantial evidence of a district’s shape and demographics or more direct evidence going to legislative purpose.” *Bethune-Hill*, 580 U.S. at 188–89 (quoting *Miller*, 515 U.S. at 913). When there is direct evidence that “race for its own sake is the overriding reason for choosing one map over others,” there is no need to also present circumstantial evidence based on the contours of the map itself. *Lee v. City of Los Angeles*, 908 F.3d 1175, 1183 (9th Cir. 2018) (quoting *Bethune-Hill*, 580 U.S. at 190). After all, federal courts have recognized that a map may “look consistent with traditional, race-neutral principles” but still violate the Fourteenth Amendment due to an impermissible legislative purpose. *Id.* (quoting *Bethune-Hill*, 580 U.S. at 190). Furthermore, “[w]hat matters is ‘the actual considerations that provided the essential basis for the lines drawn, not *post hoc* justifications the [legislative body] in theory could have used but in reality did not.’” *Id.* at 1183–84 (9th Cir. 2018) (quoting *Bethune-Hill*, 580 U.S. at 189–90).

The evidence that impermissible racial considerations predominated in the construction of the enacted LD-15 is overwhelming. The two Democratic appointees, Commissioners Sims and

1 Walkinshaw, were clear in their contemporaneous comments and subsequent deposition testimony
2 that they considered the construction of a majority-minority legislative district in the Yakima
3 Valley one of their primary goals in the 2021 redistricting process because, in the words of one
4 staffer, “our role was working to create maps that elected more Democrats.” Ex. 5, (49:19-20).
5 The two Republican Commissioners were equally clear: Because they knew this was one of their
6 colleagues’ primary goals, they were willing to acquiesce in enacting an LD-15 that suited
7 Democratic preferences in exchange for enhancing the partisan competitiveness of districts in
8 other parts of the State. *See* 11/11/21, Email from Grose to Sims, (Ex. 16). Compliance with the
9 Voting Rights Act was never the primary consideration of the Commission; in fact, the
10 Commissioners “[n]ever agreed to a definition of a VRA-compliant district” and clearly differed
11 both in their understanding of the requirements of the VRA and the importance they ascribed to
12 VRA compliance. Ex. 2, (159:12-13.)

13 Commissioner Walkinshaw plainly announced in a press release on October 21, 2021, that
14 “[g]uaranteeing voting rights for Latino community” in the Yakima Valley—a goal that he
15 separately explained meant “whether Latinos as voters . . . in the Yakima Valley had been able to
16 elect Latinos to office”—was, in his opinion, “mission critical.” Walkinshaw Dep., (64:4-14;
17 137:12-138:04) (Ex. 3). Walkinshaw also expressed to his colleagues his belief that “it was
18 necessary . . . to have a majority Latino CVAP district in the Yakima Valley,” and that this district
19 “also must perform as a Democratic district.” Fain Dep., (194:2-8) (Ex. 6); *see also* Ex. 1, (250:17-
20 251:04) (confirming that Walkinshaw “thought that Section 2 required a majority Hispanic district
21 by eligible voters” and that “it had to be a district that performed well for Democrats”); *see also*
22 10/27/21 Email From O’Neil to Walkinshaw (Ex. 14). Confronted by his own staffers with their
23 opinion that the final proposed map did not satisfy the VRA and it was therefore preferable to
24 deadlock and let the courts determine the map, Walkinshaw’s response was: “Gee, I don’t know.
25 That sounds tough.” Hall Dep., (51:21-52:07) (Ex. 4); *see also* Walkinshaw Staff Text, (Ex. 15).
26 And even though Walkinshaw apparently did not personally believe the final map was compliant
27

1 with the VRA, according to Democratic staffers he still felt that voting for it was “politically
2 expedient.” Ex. 5 (157:13-19); Ex. 4 (165:19-25).

3 Commissioner Sims’s goal was similar to Walkinshaw’s. Based upon deposition
4 testimony, her primary concern appears to have been the creation of “a majority Latino or Hispanic
5 district . . . by VAP.” Ex. 2, (114:03-10). Commissioner Graves reported that a majority-Hispanic-
6 CVAP in LD-15 “was certainly something that Commissioner Sims cared deeply about,” to the
7 extent that she “may have chosen not to vote for the map as a whole” if it did not include this
8 feature. Ex. 1, (115:20-116:09). Commissioner Sims herself recalled instructing a staffer “to
9 achieve a majority Hispanic district in the 15th.” Ex. 2, (76:10-13); *see also id.* (207:03-04) (“I
10 just wanted a majority Hispanic CVAP district.”), O’Neil Dep., (110:10-14) (Ex. 8) (“[H]aving a
11 Hispanic CVAP district higher than 50 percent was something [Commissioner Sims] w[as] trying
12 to do”). But she also characterized her own goals in partisan terms: “to draw maps that reflected
13 the political reality of our state,” which in her view meant creating a map that would elect
14 “Democratic majorities.” Ex. 2, (61:02-16); *see also id.* (283:05-09). Throughout the map-drawing
15 process, she sought “to draw a district that would increase the Democratic performance to at least
16 50 percent and maintain a . . . majority Hispanic CVAP district,” because in her mind “50 percent
17 plus one is all you need” for a minority group to elect their candidate of choice. *Id.* (152:08-12);
18 (194:07-15); *see also id.* (122:25-123:03) (explaining her opinion that the only district that would
19 enable Yakima Valley Latinos “to elect their candidate of choice” was “a majority Latino CVAP
20 district”). Further, in her opinion, the enacted map satisfied Sims’s goals for LD-15, representing
21 “what I was able to negotiate with those priorities in mind or with those goals in mind.” *Id.* (99:10-
22 14; 100:02-04; 174:10-175:9) (compromised to pass Republican performing district that she
23 believed would eventually perform for Democratic candidates as the population increased).

24 Commissioner Fain, by contrast, confirmed that his overriding objective throughout the
25 redistricting process “was to promote competitiveness” on a statewide basis, and that he tried “to
26 put forward offers that achieved goals” advanced by his Democratic colleagues “in exchange for
27 promoting competitiveness.” Ex. 6, (120:16). Fain further explained that, based upon

1 conversations with his Democratic colleagues, he “believe[d] that the[ir] primary motivation . . .
2 was to create more Democratic districts,” which they understood to require creating a majority-
3 HCVAP district in the Yakima Valley. *Id.* (140:18-141:13). In accordance with this objective, he
4 proposed a map that featured “a Yakima Valley District that met the [Democrat Commissioners’]
5 goals as they stated them.” *Id.* (155:7-9). He thought that an increased number of majority-minority
6 districts “would be particularly important to the Democratic commissioners,” and so he made sure
7 that his proposal also advanced this objective. *Id.* (198:22-199:3). Fain was “happy to cede to the
8 Democratic commissioners the geographical boundaries that they cared about”—i.e., boundaries
9 that would ensure a majority-HCVAP in LD-15 and improve Democratic performance from the
10 previous map—“so long as it was in exchange for statewide competitiveness.” *Id.* (158:9-12;
11 162:6-12). During the negotiation process, Commissioner Fain’s staffer prepared a map proposal
12 with a “target [Hispanic] citizen voting age population for Legislative District 15” of “[o]ver 50
13 percent” in order “to justify a Hispanic district to the Democratic Commissioners.” Campos Dep.,
14 (188:06-19) (Ex. 34).

15 Likewise, Commissioner Graves confirmed that the Commission reviewed precinct-level
16 racial data because “we were looking to draw[] the 15th itself to be a majority eligible voter
17 Hispanic district.” Ex. 1, (172:04-12). In fact, according to Graves, the racial contours of LD15
18 were a topic of discussion among the Commissioners from “pretty quickly after receiving [Census]
19 data” in August 2021 through the time in November 2021 when they “were really drilling down
20 to the final version of the 15th” in order “to get us to the point where you would have a district
21 where a majority of eligible voters were Hispanic.” *Id.* (174:03-13; 265:15-23). The fact that the
22 final version of LD-15 was majority-HCVAP was, according to Graves, “part of the agreement
23 that Commissioner Sims and I reached.” *Id.* (279:21-280:01); *see also id.* (115:20-116:9; 144:06-
24 19; 122:18-21; 290:08-19).

25 In other words, with respect to LD-15, the Commissioners started and ended with race;
26 race predominated in their deliberations throughout.
27

1 In contrast to the substantial evidence of racial predominance, there is little evidence in the
2 record that the Commissioners were concerned with VRA compliance—or even that they
3 understood what VRA compliance would entail. Commissioner Fain testified that he did not
4 personally believe the VRA required the creation of a majority-HCVAP district in the Yakima
5 Valley, *id.* (193:14-19), but that he “did not think [he] was violating the 14th Amendment by
6 considering race” in the creation of LD-15. *Id.* (207:6-12). Commissioner Graves testified that he
7 was also not “fully convinced that it was required,” but that “it’s hard to try to glean general
8 principles from the way courts have treated” the application of the VRA and the 14th Amendment
9 in redistricting and so he was unable to draw “a firm conclusion on exactly what was allowed or
10 required.” Ex. 1, (110:01-14; 122:01-11). Commenting on the VRA presentation that the
11 Commissioners received, Commissioner Sims recalled that “it seemed really complicated” and
12 that even months after enactment she “still d[id]n’t understand VRA in terms of all the depends
13 [sic] and the nuance of it.” Ex. 2, (56:24-57:08; 113:20-21). A staffer for Commissioner Sims
14 testified that she “thought it was more important . . . to focus on other areas of the map than comply
15 with the Voting Rights Act in the Yakima Valley region while . . . drawing the map.” Bridges
16 Dep., (33:12-22) (Ex. 5). When asked directly at which point the Commission determined that the
17 VRA necessitated the creation of a majority-HCVAP district in the Yakima Valley, a staffer for
18 Commissioner Graves responded, “I believe that decision was made regardless of the Voting
19 Rights Act.” Grose Dep., (278:15-16) (Ex. 7). Indeed, Commissioner Fain confirmed that his focus
20 in the final days before the deadline was on “figur[ing] out how to get towards a successful vote,”
21 and he “didn’t feel that arguing over the legality of this issue [of racially polarized voting] would
22 be something that would move us forward to a successful vote.” Ex. 6, (138:12-139:2).
23 Commissioner Sims’ position was apparently that VRA compliance was someone else’s problem;
24 “she did not view it being worth expending political capital to create a VRA-compliant district in
25 the Yakima Valley because such a district would be created via litigation after the fact.” Ex. 5,
26 (92:18-24).

27

1 Furthermore, the Commissioners testified that the Commission reviewed racial data, and
 2 specifically demographic data with respect to the Hispanic CVAP of LD-15. *See* Ex. 2, (47:23-
 3 48:12); Ex. 6, (50:17-19); Ex. 1, (122:18-21; 170:16-24); *see also* Walkinshaw and Sims Texts
 4 (Ex. 11). As one Democrat staffer who participated in Commission deliberations observed, “[i]t
 5 was clear to me in the final days that at least two commissioners were dead set on drawing a district
 6 that was 50.1 Latino in the Yakima Valley, and that they were not going to be moved off that
 7 position.” Ex. 4, (75:01-04). Hence, the Commissioners carefully studied racial data throughout
 8 the redistricting process, and either personally believed in the desirability of creating a majority-
 9 HCVAP district in the Yakima Valley or were willing to create that outcome to achieve other ends.

10 **B. The State Had No Compelling Interest That Could Justify Its Racial Gerrymander**
 11 **of Legislative District 15.**

12 Because “racial considerations predominated over others” when the Commission drew
 13 LD-15, *see supra* at 9–14, its handiwork violates the Equal Protection Clause unless it can
 14 “withstand strict scrutiny.” *Cooper*, 581 U.S. at 292. Accordingly, at this stage, “[t]he
 15 burden . . . shifts to the State to prove that its race-based sorting of voters serves a ‘compelling
 16 interest’ and is ‘narrowly tailored’ to that end.” *Id.* (quoting *Bethune-Hill*, 580 U.S. at 193). The
 17 Supreme Court has “long assumed that complying with the VRA is a compelling interest.” *Id.* at
 18 292, 301; *see also Shaw v. Reno*, 517 U.S. at 915. Consequently, to have any hope at surviving
 19 strict scrutiny here, the State must demonstrate that the VRA justifies the Commission’s race-
 20 based districting. *Cooper*, 581 U.S. at 292. The undisputed facts show that the State has not—and
 21 cannot—meet this burden.

22 “When a State invokes the VRA to justify race-based districting, it must show (to meet the
 23 ‘narrow tailoring’ requirement) that it had ‘a strong basis in evidence’ for concluding that the
 24 statute required its action.” *Id.* at 292 (quoting *Ala. Legis. Black Caucus*, 575 U.S. at 278). Put
 25 differently, “the State must establish that it had ‘good reasons’ to think that it would transgress the
 26 Act if it did not draw race-based district lines.” *Id.* (quoting *Ala. Legis. Black Caucus*, 575 U.S. at
 27 278). Thus, although there is a concurrent VRA challenge to LD-15, *see Soto Palmer et al. v.*

1 *Hobbs et al.*, No. 3:22-cv-5035 (W.D. Wash.), resolution of *Palmer* is not a prerequisite to
2 resolution here because the “standard does not require the State to show” that the Commission’s
3 “action was ‘actually . . . necessary’ to avoid a statutory violation,” but only that the Commission
4 had “good reasons to believe,” at the time it drew the maps, that “it must use race in order to satisfy
5 the [VRA], ‘even if a court does not find that the actions were necessary for statutory compliance.’”
6 *See Bethune-Hill*, 580 U.S. at 194 (quoting *Ala. Legis. Black Caucus*, 575 U.S. at 278).

7 Consequently, to satisfy the inquiry here—regardless of the outcome in *Palmer*—the State
8 must prove the Commission, as a whole, had a strong basis in evidence “to think that all the
9 ‘Gingles preconditions’ [were] met” and, as a result, “that §2 require[d] drawing a majority-
10 minority district.” *Id.* at 301–02 (quoting *Bush v. Vera*, 517 U.S. 952, 978 (1996) (plurality
11 opinion)). But if it cannot, then it cannot use a purported belief in VRA compliance as a
12 justification for its race-based districting *Id.* at 302.

13 In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the Supreme Court identified “three threshold
14 conditions for proving vote dilution under §2 of the VRA.” *Cooper*, 581 U.S. at 301 (citing
15 *Gingles*, 478 U.S. at 50–51). “First, a minority group must be sufficiently large and geographically
16 compact to constitute a majority in some reasonably configured legislative district.” *Id.* at 301–02
17 (quoting *Gingles*, 478 U.S. at 50) (internal citation marks omitted). “Second, the minority group
18 must be ‘politically cohesive.’” *Id.* at 302 (quoting *Gingles*, 478 U.S., at 51). “And third, a district’s
19 white majority must vote sufficiently as a bloc to usually defeat the minority’s preferred
20 candidate.” *Id.* (quoting *Gingles*, 478 U.S. at 51) (cleaned up). “When a State invokes the VRA to
21 justify race-based districting, it must show (to meet the ‘narrow tailoring’ requirement) that it had
22 ‘a strong basis in evidence’ for concluding that the statute required its action.” *Id.* at 292 (quoting
23 *Ala. Legis. Black Caucus*, 575 U.S. at 278). Put differently, “the State must establish that it had
24 ‘good reasons’ to think that it would transgress the Act if it did not draw race-based district lines.”
25 *Id.* (quoting *Ala. Legis. Black Caucus*, 575 U.S. at 278).

26 As detailed below, the State cannot establish even one of the *Gingles* preconditions were
27 necessary to establish a successful Section 2 defense, let alone all three. *See infra* at 22–29. But

1 before elaborating on the State’s failure to meet each precondition, Plaintiff highlights the glaring
 2 lack of evidence—other than a partisan presentation—to support any belief (let alone a reasonable
 3 one) that the VRA required a majority-minority district in the Yakima Valley.

4 1. The State Cannot Invoke a VRA Defense, Because It Knew It Was Not Creating a VRA
 5 Compliant Map When It Passed the Enacted LD15.

6 Initially, the State cannot invoke a compelling interest in compliance with the Voting
 7 Rights Act, because a majority of the Commissioners knew they were not actually doing so and
 8 exactly half of the Commissioners did not believe they actually needed to do so.

9 First, based upon deposition testimony, at least three of the four voting Commissioners—
 10 a majority—did not believe that the district they created and voted to enact was compliant with the
 11 VRA. Ex. 1, (122:01-11) (“I wasn’t fully convinced that [a majority-Hispanic-CVAP district] was
 12 required.”); Ex. 6, (193:14-19); Ex. 4, (51:18-20) (Commissioner Walkinshaw’s staff confronted
 13 him with their opinion that LD15 as enacted would violate the VRA, but he communicated that
 14 “he was not willing to fight very hard for an opportunity district.”); O’Neil Texts with
 15 Commissioner Walkinshaw, (Exs. 37, 38). And the fourth Commissioner, Sims, decided that a
 16 bare majority district was sufficient to satisfy the VRA despite the contrary advice given by Dr.
 17 Barreto. Ex. 2, (174:10-175:09) (explaining her decision to reduce Hispanic CVAP in the district
 18 below 50 percent under the assumption that it would increase over time); *see also* 11/11/21,
 19 Walkinshaw and Sims Texts, (Ex. 20). As one staff member put it, “I had the sense that VRA
 20 compliance was actually negotiable,” for the Democratic Commissioners. Ex. 8, (166:24-167:1-
 21 4), and that “the VRA district . . . was used as a negotiating tool, as kind of a bargaining chip,
 22 rather than a ... good-faith discussion/understanding of what does the law require here.” *Id.*
 23 (235:24-236:13).

24 Second, none of the Commissioners performed an independent analysis of the *Gingles*
 25 preconditions with respect to the final map. *See* Ex. 1, (108:03-06); Ex. 6, (138:12-139:02)
 26 (testifying that he did not see a racially polarized voting analysis as “something that would move
 27 us forward to a successful vote”). Commissioner Walkinshaw testified that he did not recall any

1 Commissioner conducting an analysis of racially polarized voting in the Yakima Valley beyond
2 the study commissioned by the Senate Democratic Caucus—a study whose conclusions were not
3 accepted by all Commissioners. Ex. 3, (82:18-24). Nor was a staffer for Commissioner Sims aware
4 of any racially polarized voting analysis performed with respect to the final map. Davis Dep.,
5 (208:11-19) (Ex. 35). Indeed, the Commissions’ nonpartisan executive director testified that, to
6 her knowledge, the Commission did not “have anyone do a Voting Rights Act compliance [sic] on
7 the final legislative district map[.]” McLean Dep., (132:12-15) (Ex. 36).

8 Third, only two of the four Commissioners thought that a VRA compliant district was even
9 necessary. The *Commission* did not retain an expert on whether the VRA required the creation of
10 a majority-minority district. *See* Ex. 25, (97:7-9). Indeed, when Chair Augustine suggested hiring
11 a VRA consultant, the Commission rejected the proposition. Ex. 6, (53:12–57:1); Ex. 1, (274:22–
12 275:21); Augustine Dep., (74:7-9, 75:1-3) (Ex. 9). It did so, in part, because Commissioners Fain
13 and Graves did not believe one was necessary and believed that—if they hired a consultant—he
14 or she would be used by the other two Commissioners for partisan advantage. Ex. 6, (53:12–57:1);
15 Ex. 1, (274:22–275:21); Ex. 9, (75:5-19). Put differently, at least half of the voting Commission
16 *did not* believe that a VRA-compliant district was required and did not want to hire an expert to
17 see if one was. This failure alone dooms the State’s VRA defense. How can the Commission have
18 had “‘a strong basis in evidence’ for concluding that the [VRA] required,” it to engage in “race-
19 based districting” when half the voting Commissioners *did not conclude* that the VRA imposed
20 such a requirement? *See Cooper*, 581 U.S. at 292; *Abbott v. Perez*, 138 S. Ct. 2305, 2334 (2018).

21 Hence, a majority of the Commissioners did not believe at the time they voted for the final
22 map that it had actually satisfied the VRA, nor did they attempt to conduct any analysis to assess
23 compliance, but instead subordinated VRA concerns to other priorities. And only two of the four
24 voting Commissioners thought that compliance with the VRA was even necessary in the first place.
25 As a majority of the Commission did not actually attempt to comply with the VRA when drawing
26 and enacting an LD-15 where race plainly predominated, the State cannot now plausibly argue that
27 the VRA justified its actions.

2. The Commission Did Not Possess a Strong Basis to Believe that the Latino Community in Yakima and Pasco is Geographically Compact Enough to Constitute a Single-Member District.

The first *Gingles* precondition requires the State to show that the Hispanic population in Yakima and Pasco is “sufficiently large and geographically compact to constitute a majority in [the] single-member district” of LD-15. *Gingles*, 478 U.S. at 50. As a matter of law and undisputed fact, the Commission lacked good reason to believe this precondition was satisfied before drawing its race-based map.

First, the presentation provided by Dr. Barreto to the Democratic Caucus is facially deficient with respect to the first *Gingles* factor. As the plain terms of the factor make clear, a district must be “sufficiently large *and* geographically compact.” *Id.* The analysis provided by Dr. Barreto as shown on the Powerpoint that was made public provides no analysis, none at all, that a *geographically compact* district can be drawn in the Yakama valley. Ex. 18. Upon examining Barreto’s “VRA Compliant” map, it’s easy to see why he did not include a compactness analysis as part of the presentation.

VRA Compliant Option-1: Yakima-Columbia River Valley

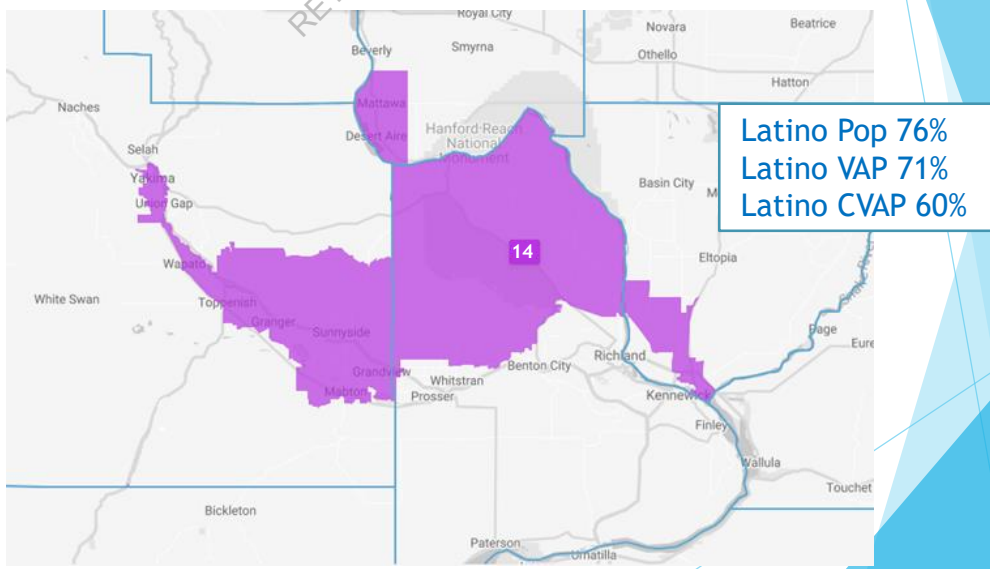


Figure 1: Dr. Barreto, “VRA Compliant Option-1: Yakima-Columbia River Valley,” (Ex. 18)

1 As is plain from even a cursory glance at this map, it is not compact. Moreover, no compactness
2 metric is given that would allow an outside observer to compare this map to the other districts to
3 analyze its relative compactness.

4 Indeed, even if the Barreto analysis were more detailed on this point, it cannot—as a legal
5 matter—serve as the only basis for the Commission to believe that the first precondition was met.
6 As the Supreme Court has explained, “[a] group that wants a State to create a district with a
7 particular design may come to have an overly expansive understanding of what §2 demands. So
8 one group’s demands alone cannot be enough.” *Abbott v. Perez*, 138 S. Ct. 2305, 2334 (2018). But
9 that was the only legal justification that could have led the Commission to believe that the first
10 *Gingles* precondition was met.

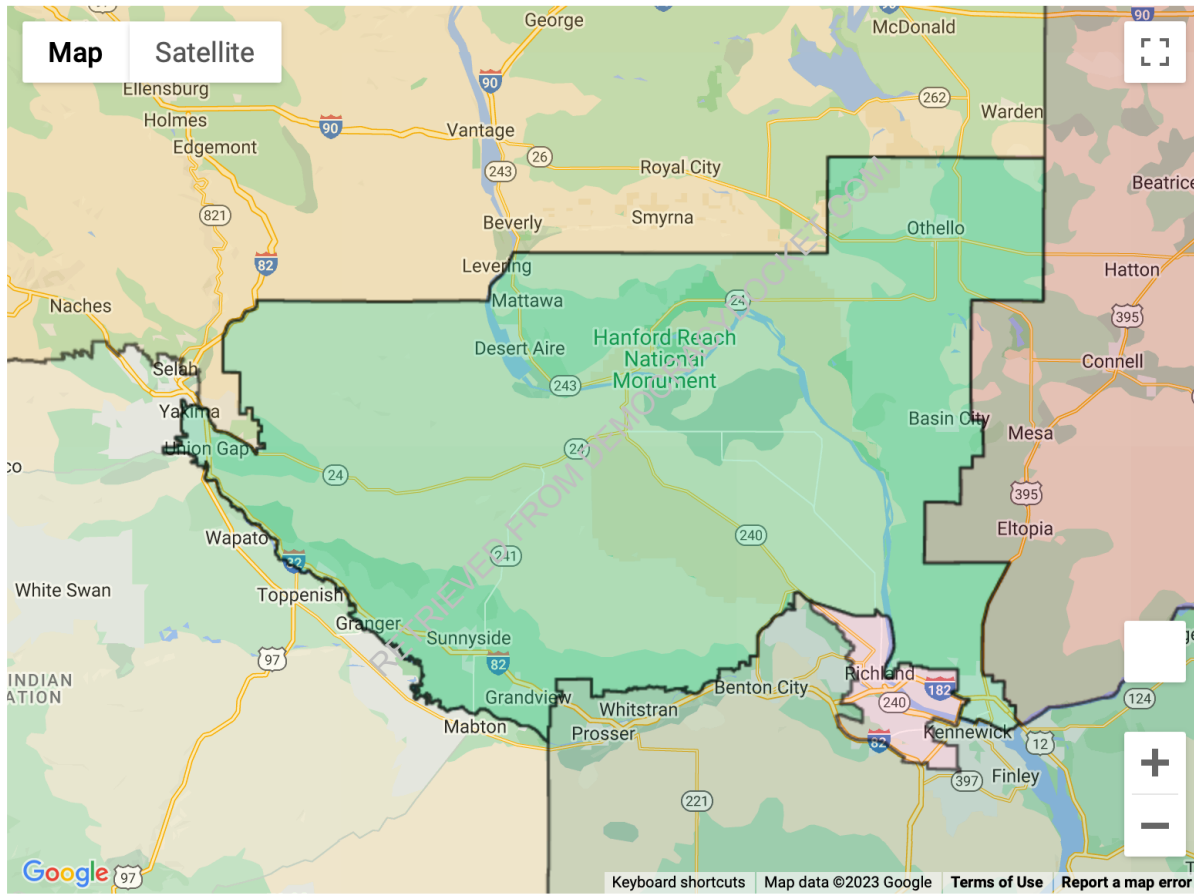
11 Second, the other legal analysis—provided to at least half of the Commission—concluded
12 that Dr. Barreto was wrong and that the first precondition was not met. DWT Memo., (Ex. 17). At
13 least half the Commissioners were persuaded by the DWT Memo, as they did not believe the VRA
14 required a majority-minority district here. Ex. 1, (122:01-11); Ex. 6, (129:9–15) (“[M]y general
15 feeling at the time that was communicated to Commissioner Graves is that I did not feel that the
16 Barreto analysis, despite not being deeply familiar with it, but I had concern about the objectivity
17 of it and did not think it would be wise to solely rely on that analysis in determining what the --
18 what is or is not required relative to the VRA.”). This alone undermines any insistence that the
19 whole Commission possessed good reason to believe the compactness element was met or that the
20 VRA required a majority-minority district.

21 Third, the shape of the enacted LD-15 suggests that it is not geographically compact.
22 Although “a compactness determination should not hinge [solely] on the shape of a district, the
23 shape of a district certainly cannot be disregarded in a compactness inquiry.” *Sensley v. Albritton*,
24 385 F.3d 591, 596 (5th Cir. 2004); *see also Bush*, 517 U.S. at 979 (“If, because of the dispersion
25 of the minority population, a reasonably compact majority-minority district cannot be created, § 2
26 does not require a majority-minority district.”). Thus, because “the geographical shape of any
27 proposed district necessarily directly relates to the geographical compactness and population

1 dispersal of the minority community in question, it is clear that shape is a significant factor that
 2 courts can and must consider in a *Gingles* compactness inquiry.” *Sensley*, 385 F.3d at 596. Here,
 3 the District crosses five county lines and bisects two of the largest cities in Central Washington.
 4 Enacted Legislative District 15 Map, <https://app.leg.wa.gov/districtfinder/displaydistrict/15> (Ex.
 5 22); *see also* Ex. 24.

6 Map District Type:

7 **Legislative** Congressional



22 *Figure 2: Enacted Legislative District 15 (Ex. 22)*

23 Fourth, to join the portions of Yakima and Pasco, the Commission impermissibly
 24 “ignore[d] traditional districting principles such as maintaining communities of interest and
 25 traditional boundaries.” *Sensley*, 385 F.3d at 598; *see also Abrams v. Johnson*, 521 U.S. 74, 92
 26 (1997) (“[T]he § 2 compactness inquiry should take into account traditional districting principles
 27 such as maintaining communities of interest and traditional boundaries.” (citation omitted)). The

1 enacted LD15 exhibits two tendrils on either side that stretch to the southeast to encompass the
2 City of Pasco and to the northwest to grab part of Yakima in order to incorporate greater numbers
3 of Latino voters and raise the district’s CVAP over 50%. Exs. 22, 24; Estrada Dep., (71:3-77:17)
4 (discusses differences between Yakima and Pasco) (Ex. 32). At the same time, the southwestern
5 boundary of the map stays resolutely north of State Highway 22 to avoid incorporating any parts
6 of the Yakama Reservation, which is contained within the same county as the City of Yakima. *Id.*

7 Therefore, the Commissioners individually, and certainly the Commission as a whole,
8 lacked either good reasons or a strong basis to believe that the Latino community is geographically
9 compact enough to satisfy the first *Gingles* precondition. This failure alone dooms the State’s
10 defense. *See Covington v. North Carolina*, 316 F.R.D. 117, 167 (M.D.N.C. 2016) (three-judge
11 panel), *summarily aff’d*, 137 S. Ct. 2211 (2017) (“Absent a strong basis in evidence for the three
12 factors, Defendants would have had no reason to anticipate a potential Section 2 violation and
13 therefore no reason to believe the race-based districting was necessary to comply with Section 2.”).
14 But this is not the State’s only failure.

15 3. The Commission Did Not Possess a Strong Basis to Believe that Hispanics in the
16 Yakima Valley are Politically Cohesive.

17 “The second *Gingles* precondition is satisfied where the minority group is politically
18 cohesive—that is, where ‘a significant number of minority group members usually vote for the
19 same candidates.’” *Luna v. Cnty. of Kern*, 291 F. Supp. 3d 1088, 1117 (E.D. Cal. 2018) (quoting
20 *Gingles*, 478 U.S. at 56). The Ninth Circuit has clarified that the political cohesiveness “inquiry is
21 essentially whether the minority group has expressed clear political preferences that are distinct
22 from those of the majority.” *Gomez v. Watsonville*, 863 F.2d 1407, 1415 (9th Cir. 1988). Thus,
23 “[i]f the minority group does not have a preferred candidate, it cannot be said that the jurisdiction’s
24 electoral scheme thwarts the minority group’s interests.” *Luna*, 291 F. Supp. 3d at 1117 (citing
25 *Gingles*, 478 U.S. at 51); see also *Gomez*, 863 F.2d at 1415.

1 Importantly, “[p]olitical cohesiveness is frequently demonstrated through statistical
2 evidence of racially polarized voting, though other non-statistical evidence may establish this
3 factor as well.” *Id.*; see also *Monroe v. City of Woodville*, 897 F.2d 763, 764 (5th Cir. 1990).

4 “Political cohesiveness must be proven with statistical evidence of historical voting
5 patterns.” *Montes v. City of Yakima*, 40 F. Supp. 3d 1377, 1401 (E.D. Wash. 2014); see also
6 *Gomez*, 863 F.2d at 1415. “Election results from within the challenged voting system are most
7 probative, although results from ‘exogenous’ elections may also be considered. *Montes*, 40 F.
8 Supp. 3d at 1401–02 (quoting *United States v. Blaine Cnty.*, 363 F.3d 897, 912 (9th Cir. 2004)).
9 “[T]he number of elections that must be analyzed to show polarized voting ‘will vary according to
10 pertinent circumstances.’” *DeBaca v. Cty. of San Diego*, 794 F. Supp. 990, 1000 (S.D. Cal. 1992)
11 (quoting *Gingles*, 478 U.S. at 57 n.25). And “[i]t is even possible that statistics from just one
12 election could” be enough. *Id.*

13 Additionally, in *Gomez*, the Ninth Circuit endorsed the Fourth and Fifth Circuit’s view that
14 a “racially polarized voting analysis,” which combines the second and third *Gingles* factors, can
15 establish political cohesiveness. See *Gomez*, 863 F.2d at 1415 (quoting *Collins v. City of Norfolk*,
16 816 F.2d 932, 935 (4th Cir. 1987), and *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir.
17 1988)); see also *Ruiz v. City of Santa Maria*, 160 F.3d 543, 551 (9th Cir. 1998).

18 The Commission never hired consultants to perform a racially polarized voting analysis for
19 the *entire* Commission. Ex. 6, (53:12-22, 54:10-17); Ex. 9, (87:19-24). The Senate Democratic
20 Caucus commissioned their own analysis from Dr. Barreto at UCLA, but according to
21 Commissioner Sims this analysis “wasn’t for the Commission” and, per their deposition testimony,
22 Dr. Barreto’s conclusions were not accepted by the Republican Commissioners. Ex. 3, (73:25-
23 74:03); Ex. 2, (242:11-15); Ex. 1, (270:11-19) (testifying that Graves “wasn’t persuaded” by” the
24 Barreto memo); Ex. 6, (129:06-15) (expressing concerns about “the objectivity” of “the Barreto
25 analysis”). This failure is fatal. See *DeBaca*, 794 F. Supp. at 1000 (“In the case at bar, however,
26 the plaintiffs have not demonstrated minority bloc voting in even one election. The plaintiffs have
27 developed no evidence to meet the second *Gingles* precondition.”); see also *Abbott*, 138 S. Ct. at

1 2334 (“[These] evidentiary items together . . . [are] simply too thin a reed to support the drastic
 2 decision to draw lines in this way.”); *Cooper*, 581 U.S. at 306 (explaining that the Supreme Court
 3 will not “approve a racial gerrymander whose necessity is supported by no evidence and whose
 4 *raison d’etre* is a legal mistake”).

5 4. The Commission Did Not Possess a Strong Basis to Believe that the Third *Gingles*
 6 Precondition Was Met.

7 “[C]ourts and commentators agree that racial bloc voting is a key element of a vote dilution
 8 claim.” *Gingles*, 478 U.S. at 55 (collecting sources). “However, not all racial bloc voting rises to
 9 a level that is cognizable within the meaning of *Gingles*’ third factor.” *Covington*, 316 F.R.D. at
 10 167. “‘Racial bloc voting’ or ‘racially polarized voting’ refers to the circumstance in which
 11 ‘different races . . . vote in blocs for different candidates.’” *Id.* (quoting *Gingles*, 478 U.S. at 62);

12 Specifically, “the third *Gingles* precondition requires racial bloc voting that is ‘legally
 13 significant’—that is, majority bloc voting at such a level that it enables the majority group ‘usually
 14 to defeat the minority’s preferred candidates.’” *Id.* (quoting *Gingles*, 478 U.S. at 56). It is true that
 15 “evidence of ‘especially severe’ racially polarized voting, in which there are few majority-group
 16 ‘crossover’ votes for the minority group’s preferred candidate, can help support finding the
 17 existence of *Gingles*’ third factor.” *Id.* (citing *LULAC v. Perry*, 548 U.S. 399, 427 (2006)
 18 (explaining that racially polarized voting there was “especially severe” because, in part, 92% of
 19 Latinos voted against a candidate but 88% of non-Latinos voted for him)). However, “a general
 20 finding regarding the existence of any racially polarized voting, no matter the level, is not enough.”
 21 *Id.*

22 Moreover, “[g]eneralized assumptions about the ‘prevalence of racial bloc voting’ do not
 23 qualify as a ‘strong basis in evidence.’” *Harris v. McCrory*, 159 F. Supp. 3d 600, 624 (M.D.N.C.
 24 2016) (quoting *Bush*, 517 U.S. at 994 (O’Connor, J., concurring)). Consequently, the “key inquiry
 25 under *Gingles*’ third factor . . . is whether racial bloc voting is operating at such a level that it
 26 would actually minimize or cancel minority voters’ ability to elect representatives of their choice,
 27 if no remedial district were drawn.” *Covington*, 316 F.R.D. at 168 (quoting *Gingles*, 478 U.S. at

1 56) (cleaned up). Thus, “to have a strong basis in evidence for the third *Gingles* precondition, a
2 legislature must give consideration to the actual and potential effect of bloc voting on electoral
3 outcomes.” *Id.*; see also *Lewis v. Alamance Cty.*, 99 F.3d 600, 608 (4th Cir. 1996).

4 One piece of evidence that courts consider is whether the redistricting body relied on a
5 racially polarized voting analysis. See, e.g., *Covington*, 316 F.R.D. at 169–171 (analyzing the
6 deficiencies in two racially polarized voting analyses, and concluding they were inadequate to
7 establish the third *Gingles* precondition because, in part, neither spoke to the *effects* of racially
8 polarized voting). As discussed *supra* at 24–25, the Commission never hired a VRA consultant to
9 conduct a racially polarized voting analysis because they could not agree on a neutral analyst. See
10 also *Abbott*, 138 S. Ct. at 2334 (“[These] evidentiary items together . . . [are] simply too thin a reed
11 to support the drastic decision to draw lines in this way.”); *Cooper*, 581 U.S. at 306.

12 Moreover, even if the entire Commission relied on Barreto’s report—which they did not—
13 it was inadequate as a matter of law because there is a difference between *legally significant* and
14 *statistically significant* racially polarized voting. *Covington*, 316 F.R.D. at 170 (discussing
15 difference between types of racially polarized voting).

16 Here, the Barreto presentation *may* have provided *statistically significant* evidence—
17 meaning evidence that “cannot be attributed to ‘chance alone,’” *id.*—but it did not provide *legally*
18 *significant* evidence, “which occurs when the ‘majority votes sufficiently as a bloc to enable it . .
19 . usually to defeat the minority’s preferred candidate,’” *id.* (quoting *Gingles*, 478 U.S. at 51, 55–
20 56).

21 What’s more, the evidence makes clear that the Commission as a whole did not rely on Dr.
22 Barreto’s presentation. Ex. 6, (193:14-19); Ex. 1, (122:01-11). Instead, individual Commissioners
23 bargained with other Commissioners to trade a certain political composition for a certain racial
24 composition in LD-15. Ex. 6, (120:16-23); Ex. 1, (279:21-280:01) (a majority-Hispanic-CVAP in
25 LD-15 “was part of the agreement that Commissioner Sims and I reached”); Ex. 2, (203:20-204:06.
26 Thus, regardless of the Barreto presentation, the Commission as a whole was engaged in political
27

1 horse trading, not in VRA compliance. *See* Exs. 16; 11/14/21, Texts Between Sims and Meyers
2 (Ex. 19), 11/2/21, Hall Email to Walkinshaw and Staff (Ex. 21).

3 **CONCLUSION**

4 For the foregoing reasons, the Court should grant summary judgment in favor of
5 Mr. Garcia.

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1 DATED this 7th day of March, 2023.

2 Respectfully submitted,

3 s/ Andrew R. Stokesbary

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CERTIFICATE OF SERVICE

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

DATED this 7th day of March, 2023.

Respectfully submitted,

s/ Andrew R. Stokesbary

Andrew R. Stokesbary, WSBA No. 46097

Counsel for Plaintiff

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CERTIFICATE OF WORD COUNT

I certify that this Motion and accompanying memorandum contains 8,399 words, in compliance with the Local Civil Rules of the United States District Court for the Western District of Washington.

DATED this 7th day of March, 2023.

Respectfully submitted,

s/ Andrew R. Stokesbary

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