

Report of the
Wenatchee Advisory Committee re: Electoral Process (WEPC)
June 27, 2016
to
Frank Kuntz, Mayor, and Wenatchee City Council

Introduction

On July 9, 2015, the Wenatchee City Council passed Resolution No. 2015-36, which appointed “an ad hoc advisory committee to study and make recommendations to the City Council related to the electoral process for City Council members.” Specifically, the committee was to examine “whether dividing the City into districts would provide more equal opportunities for all citizens to participate in the City’s political process,” “whether changes would be beneficial for a fair and equal electoral process,” and “whether creating a districting system would be beneficial.” A copy of the Resolution is attached as Appendix 1.

Process

The committee held its first meeting on August 24, 2015, and has generally met twice a month since then, for a total of seventeen times.

We prepared a set of Guiding Principles, attached as Appendix 2.

We gathered and analyzed information as follows:

- City Attorney Steve Smith reviewed the 2015 Yakima court decision.
- Steve King, Director of Community and Economic Development, and Matt Parsons, Associate Planner, presented information about Wenatchee demographics.
- County Auditor Skip Moore provided information regarding voter demographics in Chelan County and the City of Wenatchee.
- On the committee’s behalf, the city hired Forensic Data Analyst Bill Cooper to prepare sample district maps. He first spoke to the committee via speakerphone regarding the two maps (7 districts, 5 districts) he prepared, and later came to Wenatchee in person to speak to the committee.
- City Clerk Tammy Stanger, Executive Services Director Allison Williams, Community and Economic Development Director Steve King, and other staff obtained and provided extensive data for Wenatchee and other Washington cities regarding demographics, elections, and voting patterns. They also helped the committee analyze the voluminous data received.

In addition, we reached out to the public via power point presentations and a survey. Our purpose was to inform the community about our project, and to solicit input regarding whether voting by districts would benefit Wenatchee.

- November 6, 2015 – Wenatchee Senior Center (150 people attended)
- February 10, 2016 – Wenatchee Valley Museum (8 people attended)

- February 12, 2016 – CAFÉ meeting at Wenatchee Community Center (23 people attended)
- April 13, 2016 – United Neighborhood Association (12 people attended)
- April 21, 2016 – Wenatchee Downtown Rotary (50 people attended)
- April 28, 2016 – YWCA/Wenatchee Valley College “Stand Against Racism” event (6 people visited with us)
- May 17, 2016 – Interagency Council (35 people attended)
- March – May, 2016 – Online and paper survey (84 responses received)
- We received 5 letters from the public
- We received comments from 9 people and organizations at our meetings

Attached as Appendix 3 is a list of our committee and public meetings. Minutes of our committee meetings are posted on the City website.

We compiled an extensive list of pros and cons for at-large vs. district voting, attached as Appendix 4. These are general advantages and disadvantages, and there is no clear template to determine the best process for electing city council members in a given city. The merits and anticipated outcomes of the listed advantages and disadvantages are highly subjective. Therefore, our task was to determine, in our best judgment, which combination of advantages and disadvantages would hold true for Wenatchee.

We looked at how other Washington cities elect their city councils. Of the 280 Washington cities which elect councils, 259 cities elect council members at large. Five cities elect Council members by district. Sixteen cities elect council members in a combination of districts and at-large positions.

In addition, Wenatchee has developed a list of 13 cities considered to be most comparable to it. Comparable cities are those with 50% above or below Wenatchee’s levels of property tax valuation and retail sales taxes. Of those, nine elect council members at large, one elects council members by district, and three employ a combination system of 2 or 4 districts and 1 at-large position.

Appendix 5 shows a list of Washington cities electing city councils by some form of districts and a chart of Wenatchee’s comparable cities and which method of election they use.

Options Considered

We considered three options in depth: continuing the status quo of at-large voting for seven designated positions, creating seven districts, and creating a hybrid system of five districts and two at-large positions.

At-large positions. Wenatchee council members occupy assigned positions. They serve four year staggered terms, and are elected in “off” years (not during presidential election years). Candidates file for specific positions, and registered voters vote for every position in both the primary and general elections.

The key advantages of an at-large system are generally considered to be that it provides the largest pool of candidates for each city council position and that all council members focus on the city as a whole. The key disadvantages are generally considered to be that minority groups are less likely to be represented and that concerns specific to a particular neighborhood may not be heard.

Seven districts. The second option considered was to divide the city into seven districts. In the primary election, residents of each district select their top two candidates. In the general election, all registered voters vote for candidates in every district.

The key advantages of a seven-district system are generally considered to be the potential to increase geographic, racial and economic diversity; that residents have a point person for their concerns; and that interests specific to particular geographic areas will be raised. Disadvantages are generally considered to be that this system provides the smallest pool of candidates, and the most potential for council members to focus on their individual districts at the expense of the city as a whole.

Five districts, two at-large positions. With this option, the city would be divided into five districts. The remaining two seats would be at-large positions. In the primary election, residents of each district select their top two candidates and the entire city selects the top two candidates for the at-large positions. In the general election, the entire city votes for candidates in each district and in the at-large positions.

Key advantages of a hybrid system are generally considered to be that it ensures the presence of a citywide perspective, reduces the likelihood of no candidates filing, and ensures geographic representation. Disadvantages are generally considered to be that there may be friction between citywide and district council members, and that five districts may be too few to increase diversity.

Voting Rights

The first “Whereas” in Resolution 2015-36 refers to the federal Voting Rights Act of 1965, which “prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in a language minority group.” Accordingly, our committee reviewed carefully the Voting Rights Act (VRA) and also the 2015 Yakima court decision which changed the City of Yakima’s City Council voting system because it violated the VRA. Additionally, we looked at a state Attorney General opinion regarding whether the City of Pasco could vote by district in general elections.

The 15th Amendment to the U.S. Constitution, ratified in 1868 after the Civil War, states the right of citizens to vote shall not be denied or abridged because of race, color, or previous condition of servitude. In 1965, Congress passed the VRA to remove barriers that certain states

had created to discourage racial minorities from voting. Since then, voting rights law has continued to evolve through litigation in the federal court system. An important aspect of current interpretation of the law is that racial discrimination does not need to be intentional in order for a VRA violation to occur.

Yakima previously had a hybrid city council election system with four districts and three at-large positions. In the primary election, residents of each district selected their top two candidates and the entire city selected the top two candidates for the at-large positions. In the general election, the entire city voted for candidates in each district and in the at-large positions.

In the 2015 Yakima case, a federal judge looked at ten recent elections within Yakima, most of which were city council races. The judge found that Whites tended to vote for Whites and Latinos tended to vote for Latinos. Since Whites are a greater percentage of the population, and an even greater percentage of registered voters, than Latinos, the judge concluded that it was virtually impossible for Latinos to elect a candidate of their choice in a city-wide election, even with over 90% of the Latino vote. Accordingly, the judge ruled that Yakima City Council elections violated the VRA and ordered that Yakima change to a seven-district system wherein voters vote by district in both the primary and general elections.

The City of Pasco uses a hybrid city council election system with five districts and two at-large positions. The five district members are voted on in the primary election by their respective district, then by the entire city in the general election. The two at-large members are elected by the entire city in both the primary and general elections. In 2015, the Pasco City Council desired to elect its district members by district voting in both the primary and general elections, but the Franklin County Auditor advised them that would violate Washington law, which mandates city wide voting in general elections. In response, the State Attorney General issued its opinion in January 2016 that only if the city showed strong evidence that it was violating federal law could it vote by districts in the general election.

Copies of the 2014 Yakima Order for Summary Judgment, 2015 Yakima Final Injunction and Remedial Districting plan, 2016 State Attorney General opinion, and the Washington law regarding voting by districts are attached as Appendix 6, for your reference.

Hypothetical Districts

Our enabling Resolution 2015-36 asked the committee to suggest “the number of Districts that would be fair and equal, and recommended boundaries of any proposed districts consistent with state and federal law.” So that we could see what districts might look like in Wenatchee, the city hired on our behalf a redistricting expert, Mr. William S. “Bill” Cooper. Mr. Cooper has extensive redistricting experience and created the districts approved by the judge in the 2015 Yakima court decision.

We asked Mr. Cooper to prepare two sets of hypothetical maps, one set dividing Wenatchee into five districts and one dividing Wenatchee into seven districts.

The maps were prepared using 2010 U. S. census data and 2014 American Community Survey estimates. One set of maps used current city boundaries and one set used boundaries as if the annexation initiatives that the City is currently pursuing were reality.

In preparing the maps, we requested that Mr. Cooper ignore where current city council members reside, that he follow Washington criteria for creating districts (RCW 29A.76.010), and that he determine whether Wenatchee's racial demographics allowed for a Latino majority district. The latter is important in voter rights law because it is the basis for determining whether a minority racial group has the opportunity to elect a candidate of their choice.

Using current city boundaries, the seven-district map showed one district with a Latino voting age citizen majority of almost 55% and the five-district map showed one district with Latinos at more than 48%.

Using potential city boundaries, both the five-district and the seven -district maps drawn by Mr. Cooper resulted in one Latino majority district. The seven-district map showed a district with a Latino voting age citizen majority of almost 52% and the five-district map showed a district with over 52% Latinos.

For further information, attached as Appendix 7 are Mr. Cooper's Wenatchee Methodology, his Summary of Redistricting Work; and RCW 29A.76.010 criteria for drawing districts. Attached as Appendix 8 are the hypothetical five-district and seven-district maps with accompanying data, prepared by Mr. Cooper.

Recommendations

While committee members differ on whether to recommend seven districts or a hybrid five district- two at large system, the committee unanimously recommends that Wenatchee discontinue its system of seven at-large positions in electing its city council.

The committee also unanimously recommends that voting within districts occur during primary elections, and in general elections all registered voters city-wide vote for candidates in every race.

Finally, the committee unanimously recommends that prior to the next citywide election in November 2017, Wenatchee make the transition from its current at-large voting system to a district system of elections. We recommend in so doing, that the City engage Mr. Bill Cooper to draw the district lines.

Why not at-large? In the 13 years that Wenatchee has elected a city council, 12 of the last 20 elections were uncontested. Therefore, having the largest pool of candidates does not seem to have been a benefit.

In addition, we lack diversity among the candidates who do run. In 13 years only three Latinos have run for a city council position, despite being almost 25% of our voting age population.

Further, there is concern that Wenatchee, without any intent to do so, may be at risk of violating the federal Voter Rights Act.

Our low number of candidates has been matched by a relatively low voter turnout, only 43% in 2015.

In summary, the lack of citizen participation and engagement leads us to believe that electing city council members at-large is not the best system for Wenatchee.

While dividing the City into districts is a mechanical approach that may increase the number of candidates willing to run for City Council or increase voter turnout, we cannot legislate participation. That requires a culture shift towards civic engagement. Accordingly, the Committee makes the following recommendations regarding the larger issue of how to increase community participation in city government:

- Develop a City Advisory Council
- Continue reaching out to the Latino community
- Improve social media outreach
- Assign council members to community groups
- Seek partnerships to build deeper ties to the community
- Consider developing a community engagement plan

These recommendations are more fully explained in Appendix 9.

Seven Districts. An eight-member majority of our committee supports recommending that Wenatchee move to a seven-district system, where council members must reside within their district in order to be eligible to run for office.

The majority believes that a seven-district system will:

- increase access from all sectors of Wenatchee to ensure the entire community has representation;
- make it easier for people to run for office by limiting the geographic area of their campaign focus;
- build trust as voters will have a point person who lives in their neighborhood, so that council members will be more approachable to the citizens in their district;
- develop a system where all members maintain a city-wide perspective; and
- create the most legally defensible voting structure that complies with federal and state voting laws.

The majority report in its entirety follows immediately and is herein fully incorporated.

Five Districts-Two At large Positions. A three-member minority of our committee supports recommending that Wenatchee move to a system where five council members must reside within their district in order to be eligible to run for office and two council members may reside anywhere in the City.

Like the majority, the minority believes that creating five districts will:

- increase access from all sectors of Wenatchee to ensure the entire community has representation;
- make it easier for people to run for office by limiting the geographic area of their campaign focus; and
- build trust as voters will have a point person who lives in their neighborhood, so that council members will be more approachable to the citizens in their district.

In addition, the minority believes that retaining two at-large positions will:

- provide a valuable citywide perspective counterbalancing the narrower focus of district representatives.

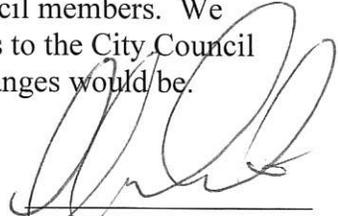
The minority report in its entirety follows immediately and is herein fully incorporated.

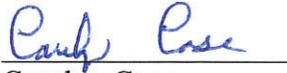
Conclusion

The Wenatchee Electoral Process Committee is pleased to submit this report of its work regarding the manner in which the City of Wenatchee elects its city council members. We believe we have fulfilled our charge to study and make recommendations to the City Council regarding whether changes would be beneficial, and if so, what those changes would be.


Susan Albert

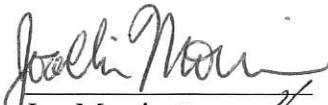

Oralia Banuelos


Mario Cantu


Carolyn Case

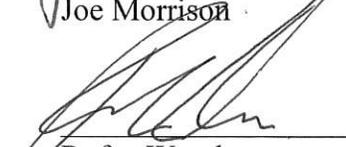

Alma Chacon

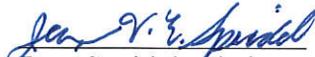

Gustavo Montoya


Joe Morrison


Karen Rutherford


Mark Urdahl


Rufus Woods


Jean Speidel, Chair

Majority Report:
Recommend Seven Districts

Memorandum

To: Mayor Kuntz and Wenatchee City Council

From: Wenatchee Electoral Process Committee Members: Oralia Banuelos, Carolyn Case, Alma Chacon, Gustavo Montoya, Joe Morrison, Karen Rutherford, Mark Urdahl, and Rufus Woods

Date: May 15, 2016

Re: Proposed Change to 7 District Voting System

Executive Summary: Prior to the next city-wide election in November 2017, Wenatchee should transition from its current at-large voting system (where councilmembers may reside anywhere within city limits) and create seven districts where councilmembers must reside within the district in order to be eligible to run for office. No election system is perfect, but a seven district system is Wenatchee's best option as it will: 1) increase access from all sectors of Wenatchee; 2) make it easier for people to run for office by limiting the geographic area of their campaign focus; 3) build trust as voters will have a point person who lives in their neighborhood; 4) develop a system where all members maintain a city-wide perspective; and, 5) create the most legally defensible voting structure that complies with federal and state voting laws.

Current Voting System Has Significant Concerns

Wenatchee's current at-large voting system for City Council has been in place for approximately 15 years. Candidates may live in anywhere within the City limits to be eligible for office and all registered voters can vote for each of the seven seats in both the primary and general elections. There are two major problems with the current system.

First, the system has not produced a significant number of diverse candidates from all sectors of Wenatchee's community. Wenatchee has a significant Latino population (approximately 30%) yet only one has ever made it through the general election cycle – Ruth Esparza in 2015 (albeit, unopposed). Two other Latinos have run in the past, however, both were defeated in the general election (Gaby Fernandez in 2009 & Martin Escalera in 2011). It is quite possible that the need to run a city-wide election, with attendant costs and need for name recognition, has artificially limited the number of candidates willing to run for office.

Second, the current system leaves the City vulnerable to a legal challenge based on the federal Voting Rights Act ("VRA"). As most are aware, the City of Yakima recently endured a lengthy

legal battle over its 37-year-old, at-large voting system. Although Yakima has a larger Latino population and several candidates had run for city council for many years, none had ever been elected. In 2014, a federal judge struck down Yakima’s at-large voting system ruling it unintentionally suppressed the voting rights of Latinos, thus violating the VRA. Ultimately, the court ordered the implementation of a seven district plan based on maps prepared by experts in voting rights laws. Yakima spent millions defending (and losing) the case and, adding insult to injury, was ordered to pay the attorney fees of the plaintiffs who brought the lawsuit.

The Proposed Seven District System is the Best Alternative

The seven district proposal differs from the system recently created in Yakima in one key respect. Yakima’s system requires that *only* registered voters living within the district may vote in the primary and general election. The seven district proposal for Wenatchee would limit voting to residents of the district for the primary election only, but allow all registered voters living in Wenatchee to vote in all council races during the general election. The reason for this is simple – state law mandates the result unless a jurisdiction has a “strong basis in evidence” that it is currently violating the federal VRA. A January 2016 opinion letter from the State’s Attorney General’s office supplies the legal analysis on which this recommendation is made.

While there are concerns that Wenatchee’s present at-large system may be violating the VRA, there is presently not enough evidence (in the opinion of the Committee) to conclude the City can override state law. A comparison of the evidence between Yakima and Wenatchee is outlined below.

Evidence Judge Relied Upon Proving Voting Rights Violations in Yakima	Potential Evidence of Voting Rights Violations in Wenatchee
<ul style="list-style-type: none"> • 2009 City Council race (Dave Ettl defeated Sonia Rodriguez 52%-48%) • 2009 City Council race (Bill Lover defeated Benjamin Soria 65%-35%) • 2012 Supreme Court race (Danielson, voted “unqualified” by local bar earned 63% of votes v. Gonzalez, 2011 Outstanding Judge of the Year 37% of votes) • 2011 Proposition 1 Vote to change to district voting (voted down 58% to 42%) 	<ul style="list-style-type: none"> • 2009 City Council race (Tony Veeder defeated Gaby Fernandez 54% to 46%) • 2011 City Council race (Linda Herald defeated Martin Escalera 79% to 21%) • 2012 Supreme Court race (Danielson 61% v. Gonzalez 39%)

- | | |
|--|--|
| <ul style="list-style-type: none"> • 2013 School Board race (Rice defeated Villanueva 62% to 38% even though Rice withdrew prior to general election) | |
|--|--|

Proving a VRA violation is not easy and it is based on a “totality of the circumstances” in each community, therefore an “apples-to-apples” comparison is difficult to achieve. It is not simple approach and requires expert testimony based on studies of voting patterns which has not been conducted in Wenatchee.¹ In Yakima, experts testified racial groups engaged in “bloc voting” – meaning that Anglo and Latino voters tended to support candidates of the same race/ethnicity. The net result of this voting pattern was that Latino candidates always lost because they could not gain sufficient Anglo votes needed to prevail in an at-large voting system.

The one election we share in common with Yakima, the 2012 Supreme Court race, raises concerns as it appears that Chelan County voters similarly voted for the unqualified Anglo candidate, Bruce Danielson, by a wide margin – 61% to 39%. This happened even though the *Wenatchee World* wholeheartedly endorsed Steve Gonzalez in an editorial outlining his vastly superior qualifications.² Mr. Danielson never campaigned and raised no campaign donations, yet he won in a landslide throughout eastern Washington. An expert from the University of Washington who studied the election results concluded that, “in central and eastern Washington there was a high degree of racial bloc voting.”³

In light of the above concerns, the Committee hired an expert to determine whether legal voting districts could be drawn in Wenatchee. The expert we chose, Bill Cooper, was the same expert the federal court judge relied on to draw Yakima’s new voting districts.⁴ Mr. Cooper has testified in numerous voting rights cases and has had several plans adopted by various courts.⁵ We believe the use of Mr. Cooper’s seven district maps would put the City on solid legal footing and provide the foundation needed to allow more diverse candidates to run for, and have the potential to become elected to the City Council in the future.

¹ It is important to note that it is not necessary to prove intentional discrimination to prevail in a VRA lawsuit.

² <http://www.wenatcheeworld.com/news/2012/jul/07/primary-decides-for-supreme-court/?print>

³ <http://www.kplu.org/post/racial-bias-factor-washington-supreme-court-election-research-finds>

⁴ See Appendix 7 (Summary of Bill Cooper’s redistricting work)

⁵ It is also worth noting that the methods used by Mr. Cooper to draw the seven districts for Wenatchee were recently upheld by the U.S. Supreme Court in a VRA challenge arising out of the State of Texas.

The proposed plan creates seven districts that would each contain approximately 5,000 residents and was drawn with existing precinct and neighborhood boundaries in mind.⁶ The map did not take into consideration the current residences of incumbent councilmembers.⁷ Under this plan, District 1 in South Wenatchee, would create a “minority-majority” district⁸ whereby nearly 52% of the voting age citizens of that district are Latinos. This would create a system where Latino voters would have the ability to elect one member to the City Council even if racial bloc voting patterns continue.⁹ It does not guarantee representation, only the opportunity to achieve that representation.

District 2 would have nearly 31% voting age citizens who are Latinos. While this would not be a “minority majority” district, it is significantly larger (nearly double) than District 2 under the Hybrid plan outlined below. In other words, under the seven district plan, a second “minority-majority” district will be achieved much quicker (based on Mr. Cooper’s voting age population projections) than under the Hybrid plan. This is a critical difference in the two proposals and, we believe, creates a voting system that best ensures “all eligible voters have an equal opportunity to elect Council members of their choosing” now and in the future.¹⁰

A Five-Two Hybrid System Should Be Rejected

Several members of the Committee support a 5-2 hybrid system and will submit a report supporting their proposal. The proposal should be reviewed and considered, but ultimately rejected. While the reasoning of our fellow committee members is solid, we ultimately conclude it is not in the City’s best interests to adopt such an approach for the following reasons.

First and foremost, the 5-2 hybrid system was similarly proposed by the City of Yakima and rejected by the federal court judge. The judge concluded it would continue to violate the VRA because it allowed two council members to be elected at-large, a system he ruled was suppressing voter rights. Thus, implementing such a system in Wenatchee would leave the City

⁶ See Appendix 8 (4/10/16 map drawn by Bill Cooper which includes the City’s annexation plans).

⁷ See Appendix 2 – bullet point seven (*Guiding Principles* adopted by Electoral Process Committee).

⁸ A “majority minority” district is one that is permitted under the VRA to ensure equal voting opportunity on the basis of race. It creates a voting district that consists of a majority of citizens of voting age population of a particular race.

⁹ Throughout the public meeting process, a number of residents have argued that one of the biggest risks or weaknesses of the seven district proposal is the possible loss of the sole Latina on the current Council, Ruth Esparza, given that Ms. Esparza does not reside in District 1. We do not share that fear and believe that Ms. Esparza, as a recently-elected incumbent to serve out the remainder of Tony Veeder’s term, should have a significant advantage in retaining her seat should she choose to seek re-election in 2017.

¹⁰ See Appendix 2 – bullet point four.

vulnerable to attack for all the reasons outlined above. Moreover, the 5-2 system does not create a “majority minority” district, as required by the VRA. Moreover, the drop-off to the next largest district would be to 16% of Latinos of voting age, as opposed to nearly 31% under the seven district plan. Bill Cooper, during in-person testimony before the Committee, recommended we stay away from the 5-2 proposal and go with seven districts as that was the most “legally defensible” alternative.

Second, it is quite possible the two at-large members would be from the same district which would mean one district would have three council members. That would lead to significant concerns of over-representation in one district as compared to the other four.

Finally, once five districts are created it would be very difficult to move to seven districts at a later date. The district lines would become entrenched and voters (and incumbents) would be reluctant to have them change again.

Conclusion

A seven district plan will put Wenatchee on solid ground as we head into the future. While change is hard, our voting system must adjust to ensure fairness for all residents of our community. This change will undoubtedly hit some bumps in the road along the way, however, it will ultimately allow Wenatchee to grow into the future knowing it has created a level playing field by complying with federal and state voting laws.

Minority Report
Recommend Five Districts – Two At Large Positions

Memorandum

To: Mayor Kuntz and Wenatchee City Council

From: Wenatchee Electoral Process Committee members Susan Albert, Mario Cantu, Jean Speidel

Re: Recommendation to change to voting system of 5 Districts and 2 At-large positions for electing City Council members

Current electoral process of seven at-large positions

The Wenatchee Electoral Process Committee has been asked “to determine whether changes would be beneficial for a fair and equal electoral process” in electing City Council members.

We have noted that the City of Wenatchee has a significant participation and engagement problem in selecting City Council members. We see a lack of candidates resulting in more uncontested elections than contested elections, 12 uncontested elections in the last 20. We see a lack of diversity among the candidates who do run for election; for example, while the Latino population is approaching 30% of our City’s total population, only three Latinos have run for a city council position in the 13 years since Wenatchee adopted a Council-Mayor form of government.

Therefore, it appears to us that the current City council electoral system of seven at-large positions is not well suited to Wenatchee at the present time.

While dividing the City into districts is not a guarantee that the number of contested races will increase or that voter participation will rise, it will at least ensure greater geographic diversity on the Council, and it may result in greater racial, economic or age diversity.

We favor five districts and two at-large seats as the logical means to improve our electoral system.

With the five and two option, the city would be divided into five districts. The remaining two seats would be at-large positions. In the primary election, residents of each district will select their top two candidates and the entire city will select the top two candidates for the at-large positions. In the general election, the entire city will vote for candidates in each district and in the at-large positions.

We believe that in Wenatchee this hybrid system will reflect the advantages of both district and at-large voting.

We believe that five districts are sufficient to create a Council that is reflective of the City while also ensuring the presence of a citywide perspective.

Under the five district-two at large system using current city boundaries, the city would have one district just shy of being a Latino majority district as of the 2010 census and 2014 American Community Survey estimates. However, the demographic trends suggest that even under current city boundaries, one district may be Latino majority by the 2017 elections (which would be based on estimated population in 2016) and almost certainly would be Latino majority by the 2020 census.

In addition, if the city annexation initiatives now being pursued do occur, then the five district-two at large system will have more than a 52% Latino majority in one district; and the seven-district system will have less than a 52% Latino majority.

While it is true that under the five district plan the district with the second highest percentage of Latino citizens of voting age is much less than under the seven district plan, none of the Latinos who have served on either the City Council or Wenatchee School Board have lived in the district with the highest percentage of Latinos. Therefore, with two at-large positions, it is certainly possible that the chances of a second Latino being elected are actually higher than in a seven-district plan.

Based on the foregoing, we find that the five district-two at large system may be more favorable to increasing Latino racial diversity than the seven-district system.

In our public outreach, we heard consistently that a smaller geographic area than Wenatchee as a whole is more comfortable for many people. We heard that a sense of neighborhood is important. We believe having five districts would begin to develop the notion of neighborhood in the minds of community members. Barriers to running for office in a district will be lower because it would be less costly and less intimidating. Dividing the City into five districts would provide the opportunity to develop candidates in geographic areas that currently do not have residents on the city council.

In our public outreach, we also heard that people are concerned a division into districts will cause the Council to lose its perspective of being stewards of the City as a whole. We believe it is important to keep two at-large positions on the Council. Having council members with a mandate to focus on the City as a whole is a valuable counterbalance to the narrower outlook of district representatives.

Relevance of Yakima and its Voting Rights Act court case

Much has been discussed regarding Yakima and its 2015 court case. We disagree with the majority assessment of the comparability of Wenatchee and Yakima. We look at the same facts and reach different conclusions.

Yakima is different from Wenatchee:

- Yakima's geographic area is three and a half times the square mileage of Wenatchee
- Yakima's population is three times the population of Wenatchee
- Latinos comprise over 40% of Yakima's population, but less than 30% of Wenatchee's population
- Yakima has been electing a city council for 38 years, since 1978; Wenatchee for 13 years, since 2003
- In over 35 years, Yakima failed to elect a Latino city council member; Wenatchee has already elected a Latina
- Wenatchee has elected and re-elected a Latino to the Wenatchee School Board

The majority opinion finds the 2009 and 2011 Wenatchee city council elections in which Latino candidates lost handily as potential evidence of voting rights violations in Wenatchee. We disagree. We believe that there are other reasons than race which caused the Latino candidates in Wneatchee to lose their elections.

The City of Wenatchee is not a party to any lawsuit regarding its electoral process, nor is any such lawsuit threatened against the City. Our advisory committee was not asked by the City Council to address the likelihood of litigation against the City of Wenatchee regarding its electoral process, or to speculate what the results of that litigation could entail. If the city desires an opinion regarding the extent to which, if at all, Wenatchee is at risk of a Voting Rights Law violation, we recommend that it engage a voting rights law attorney to provide it with a legal opinion on this point.

Implementation Timing

Ideally, we would recommend taking some time before a change is implemented, in order to do the following three things:

- Educate the community about the change. Impress upon people that their vote truly counts in a district system.
- Develop candidates. Increase the number of people who are ready to run for office
- Focus on voter registration. In order to realize the benefit of districts, Latinos in the Latino majority district will need to increase their number of registered voters. We also recommend a focus on Millennials who are underrepresented as registered voters.

We do not suggest that the City be solely responsible for these tasks. We see a role for the political parties, schools, and business and civic organizations also. Nevertheless, we believe the City can be an important player, as described in the WEPC report's Appendix 9, Civic Engagement Recommendation.

In addition, if the City waited until either the current annexation initiatives have occurred or until the 2020 census data are available, that would reduce the potential for having to re-draw district lines in quick succession during the next few years.

However, we also believe that once a decision is made to change to a district election system, it is incumbent upon the City to move forward as quickly as possible. Therefore, we join with the majority of our committee in recommending that the City proceed to transition to a district system by the 2017 elections.

Why we do not support seven districts

We believe that we should not carve up the city into seven districts, given the lack of participation and engagement. The risk of districts having no candidates concerns us. We see potential challenges in getting interested, engaged candidates to run in some districts. In contrast, moving to a five district-two at large system could help encourage the development of candidates in more areas of the city than there are currently, but limit the risk of districts having no candidates.

We believe it would create unnecessary and unwelcome divisiveness in our community to have seven council members each focused primarily on their own districts.

We are not convinced that Wenatchee needs to move to seven districts in order to forestall a Voting Rights Act lawsuit. No one on this committee is a voting rights law attorney. As noted above, if the city desires an opinion on this issue, we recommend that it engage a voting rights law attorney.

Conclusion

Changing to a five district-two at large system for electing Wenatchee City Council members will result in the best electoral process for Wenatchee. Creating five districts will allow for fair and equal opportunities for all citizens to participate in the City's political process. Wenatchee will reap the benefits of having a Council that is reflective of the City's demographics and responsive to neighborhood concerns, while also ensuring the presence of a counterbalancing citywide perspective.

APPENDICES

1. Wenatchee City Council Resolution No. 2015-36
2. Wenatchee Electoral Process Committee (WEPC) Guiding Principles
3. List of Committee and Community meetings
Minutes of Committee meetings are available on the City of Wenatchee website
4. Pros and Cons of District and At-large Elections
5. Washington cities electing councils by district
Wenatchee comparable cities council election method
6. Yakima Order for Summary Judgment dated August 22, 2014
Yakima Final Injunction and Remedial Districting Plan dated February 17, 2015
January 2016 Washington Attorney General opinion regarding Pasco
RCW 35.18.020 regarding voting by districts
7. William S. ("Bill") Cooper 2016 City of Wenatchee Methodology
William S. Cooper Summary of Redistricting Work
RCW 29A.76.010 Criteria for drawing districts
8. Five-district maps and population summary reports
 - Current City boundaries
 - City boundaries including potential annexationsSeven-district maps and population summary reports
 - Current City boundaries
 - City boundaries including potential annexations
9. WEPC Civic Engagement Recommendation

Appendix 1

- Wenatchee City Council Resolution No. 2015-36

RESOLUTION NO. 2015-36

A RESOLUTION, appointing an ad hoc advisory committee to study and make recommendations to the City Council related to the electoral process for City Council members.

WHEREAS, the Voting Rights Act of 1965 prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in a language minority group; and

WHEREAS, the City Council of the City of Wenatchee desires to appoint an ad hoc advisory committee to examine the City's electoral process, specifically whether dividing the City into districts for purposes of electing Council members would provide more equal opportunities for all citizens to participate in the City's political process.

NOW, THEREFORE, the City Council of the City of Wenatchee does hereby resolve as follows:

SECTION I

That an ad hoc advisory committee shall be established for the purpose of examining the electoral process for City Council members to determine whether changes would be beneficial for a fair and equal electoral process. Specifically, the committee shall examine whether creating a districting system would be beneficial and, if so, the number of Districts that would be fair and equal, and recommended boundaries of any proposed districts consistent with state and federal law. The committee shall develop a recommendation and report back to the City Council within twelve (12) months of the date of this Resolution.

SECTION II

The committee shall consist of the following members listed in alphabetical order:

Susan Albert	1515 Erin Place, Wenatchee
Oralia Banuelos	923 Kittitas, Wenatchee
Mario Cantu	1507 4 th Street, Wenatchee
Carolyn Case	729 Monroe, Wenatchee
Alma Chacon	614 Highland, Wenatchee
Gustavo Montoya	851 Walker, Wenatchee
Joe Morrison	310 Whitebirch Place, Wenatchee
Karen Rutherford	2105 Ione, Wenatchee
Jean Speidel	1031 Grenz, Wenatchee
Mark Urdahl	1125 Amherst, Wenatchee
Rufus Woods	104 S. Delaware, Wenatchee

SECTION III

The committee shall develop its own meeting and work schedule. All meetings of the committee shall be open to the public and governed by the Open Public Meetings Act, Chapter 42.30 RCW. The committee shall work with City staff for information and guidance as needed. The City shall provide the committee with legal counsel independent from the City attorney's office on a budget approved by the Mayor's office from the City's general fund budget for administrative expense.

SECTION IV

The committee's recommendations to the City Council shall be for guidance purposes only and shall not be binding on the City Council.

PASSED BY THE CITY COUNCIL OF THE CITY OF
WENATCHEE at a regular meeting thereof this 9th day of July, 2015.

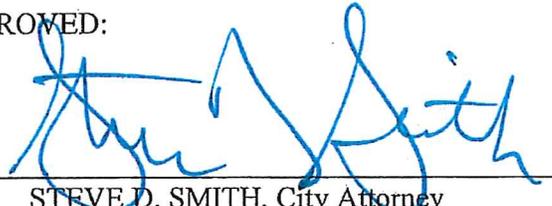
CITY OF WENATCHEE, a Municipal
Corporation

By 
FRANK KUNTZ, Mayor

ATTEST:

By 
TAMMY L. STANGER
City Clerk

APPROVED:

By 
STEVE D. SMITH, City Attorney



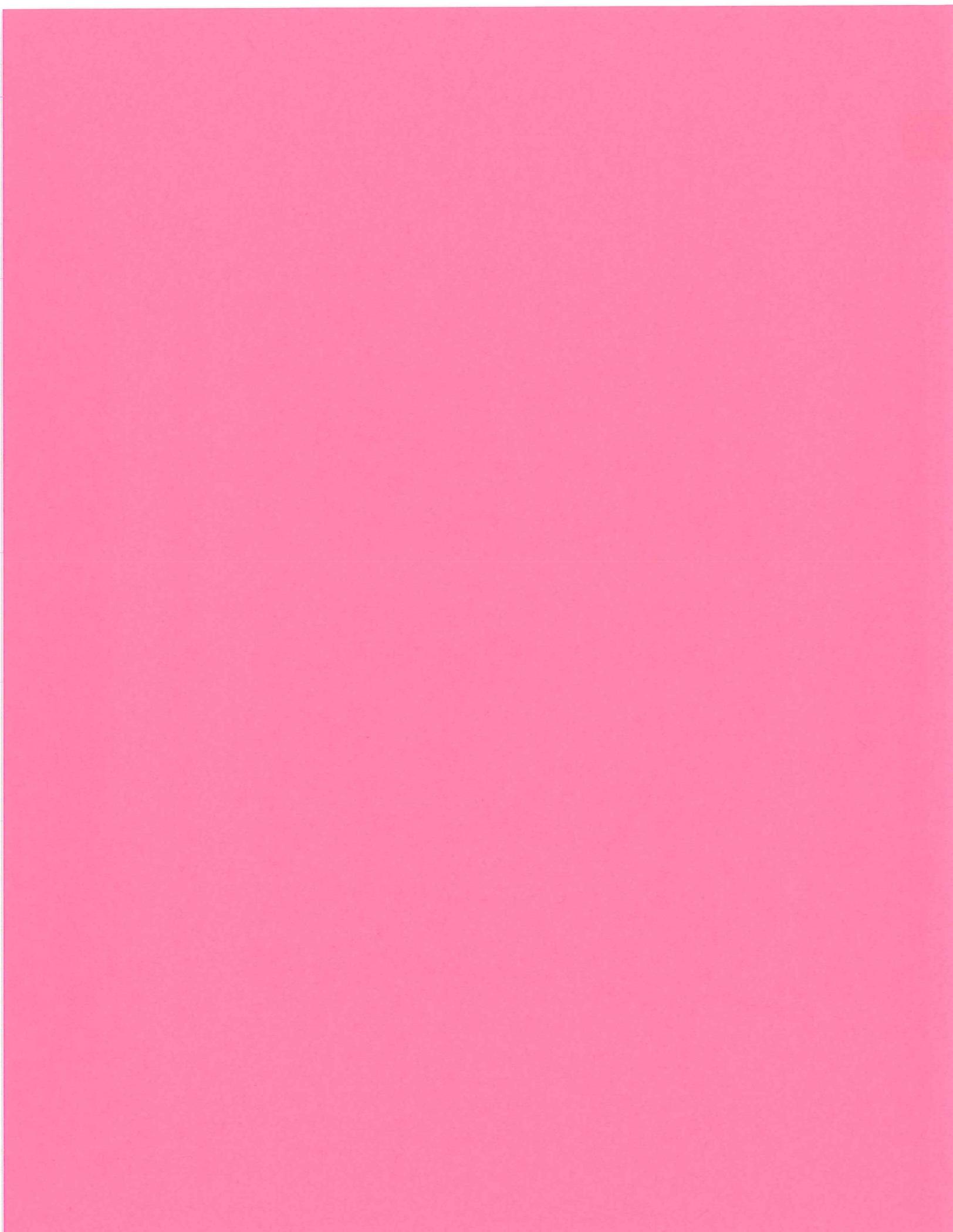
Appendix 2

- Wenatchee Electoral Process Committee (WEPC) Guiding Principles

Guiding Principles
Wenatchee Electoral Process Committee

The Wenatchee City Council formed the Electoral Process Committee to review the way City Council members are elected and to determine whether the current at-large voting process should be altered. The Council asked that a recommendation be made by July, 2016. In order to achieve that goal, the Committee sets forth the following principles:

- We will abide with Constitutional and statutory voting rights laws to the best of our abilities.
- We will gather and analyze information from experts knowledgeable in elections, demographics and voting laws.
- We will gather and analyze reports and plans developed in recent years by other cities and other organizations regarding changes implemented to city council electoral systems, including recent changes to Yakima's City Council election process.
- We will strive to ensure all eligible voters have an equal opportunity to elect Council Members of their choosing.
- We will strive to increase the opportunity for persons with a wide range of diverse interests to seek the office of city council.
- We will strive to achieve a balance between neighborhood and citywide concerns.
- We will develop a recommendation that is best for the City of Wenatchee without consideration of protecting incumbent seats.
- We will clearly state the rationale behind our recommendation including both pros and cons, and including best and worst case scenarios, so that the council can make an informed decision.
- If there is not consensus, the Committee will provide majority and minority reports.
- We will document the degree of community engagement achieved.

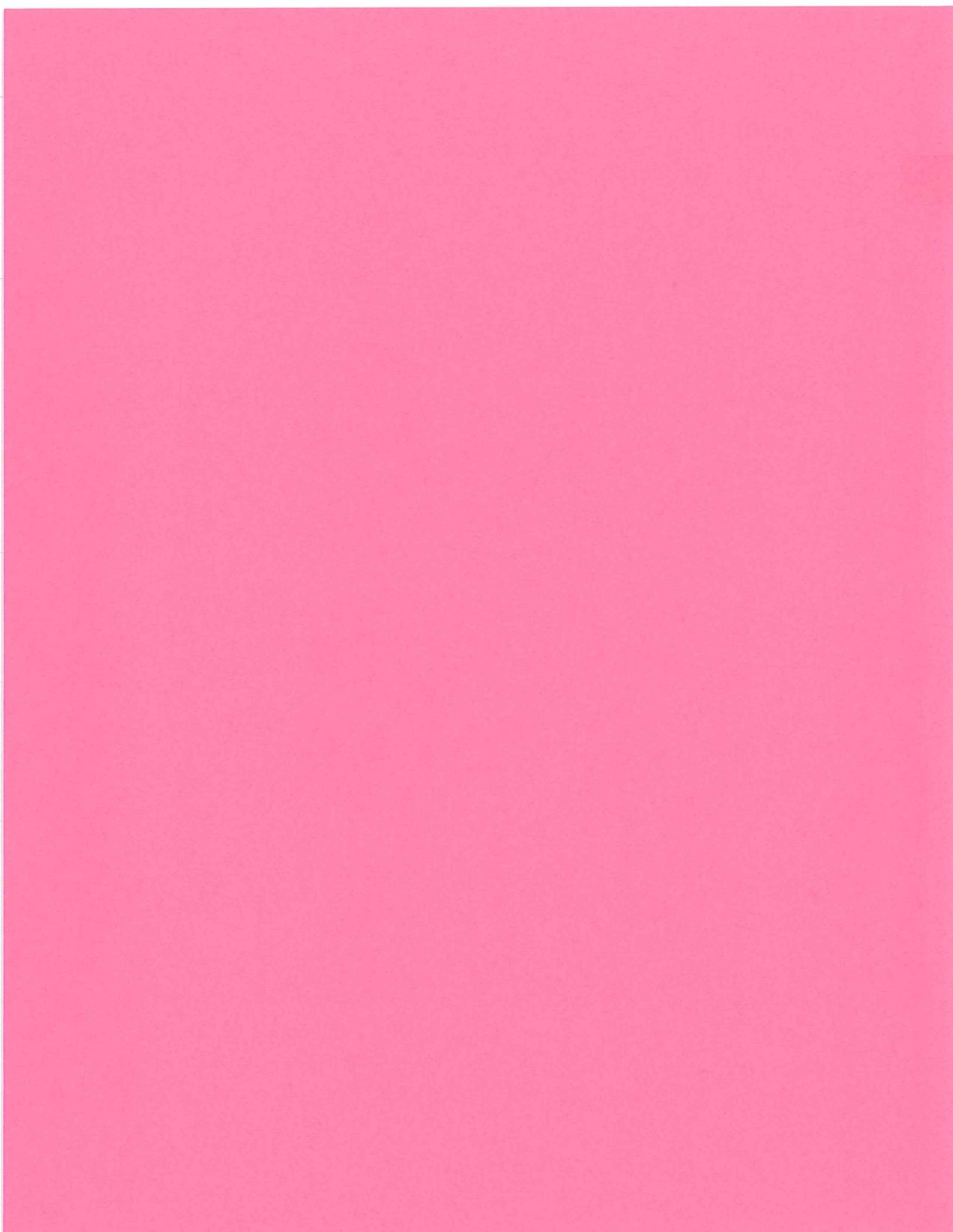


Appendix 3

- List of Committee and Community meetings
(Minutes of Committee meetings are available on the City of Wenatchee website)

Committee and Community Meetings
Wenatchee Electoral Process Committee

August 24, 2015 – Committee
September 21, 2015 – Committee
October 5, 2015 – Committee
October 19, 2015 – Committee
November 2, 2015 – Committee
November 6, 2015 – Community -- Wenatchee Senior Center
November 16, 2015 – Committee
November 30, 2015 – Committee
December 14, 2015 – Committee
January 11, 2016 – Committee
January 25, 2016 – Committee
February 10, 2016 – Community -- Wenatchee Valley Museum
February 12, 2016 – Community – CAFÉ(Community for the Advancement of Family and Education) meeting at Wenatchee Community Center
March 14, 2016 – Committee
March 28, 2016 – Committee
April 11, 2016 – Committee
April 13, 2016 – Community -- United Neighborhood Association
April 21, 2016 – Community -- Wenatchee Downtown Rotary
April 25, 2016 – Committee
April 28, 2016 – YWCA/Wenatchee Valley College “Stand Against Racism” event
May 9, 2016 – Committee
May 17, 2016 – Interagency Council
May 23, 2016 – Committee
March – May, 2016 – Online and paper survey
June 27, 2016 – Committee



Appendix 4

- Pros and Cons of District and At-large Elections

12/14/16

**Wenatchee Electoral Process Committee
Pros and Cons of Districts and At-large Elections**

Districts:

Pro:

[From *National League of Cities*] District election proponents favor having council members elected to represent individual wards because:

- District elections give all legitimate groups, especially those with a geographic base, a better chance of being represented on the city council, especially minority groups. Several court decisions have forced jurisdictions to switch from at-large elections to district elections, and in most cases the reason was to allow more representation by specific ethnic and racial groups (see: Springfield, IL, 1987 and Dallas, TX, 1990; see also amendments by the U.S. Congress to the Voting Rights Act, 1982).
- District councilmembers are more sensitive to the small but important problems of their constituents, like waste disposal.
- District elections may improve citizen participation because councilmen who represent a specific district may be more responsive to their constituency.

Potential to increase representation and engagement in city issues from all citizens, including our Latino population

Potential to increase engagement in neighborhoods, including South Wenatchee

Lower barriers to entry – candidates would need to know fewer people (example: may be sufficient to know parents of school children); less costly campaign re: mailings, signs

If different sections of the city have different interests, would allow those interests to be represented (example: streets in south Wenatchee versus north Wenatchee)

Different economic levels might be represented on the city council

Would give residents a point person who lives in their district to go to and seek change

Create progressive voting system that fully complies with federal Voting Rights Act – now and in the future

Avoid accusations that City is operating on outdated voting system that has recently been struck down in Yakima as suppressing minority voting rights

Avoid risk and potentially large legal fees imposed against City if current at-large system is challenged

Theoretically provides incentive/encouragement to those who have not fully participated in City government in the past

Does not rely on Council to appoint diverse community members to open Council seats

Creates incentive to run for office (Comment: I'm not sure this is true)

12/14/16

Other cities report that district representatives tend to be responsive to the concerns of their population

Con:

[From National League of Cities] Councils elected by district elections may experience more infighting and be less likely to prioritize the good of the city over the good of their district.

Only 14 percent of all municipalities use district elections. Cities with populations of 200,000 or more are more likely to use district elections.

Potential that no one files for a City Council seat

Potential for unopposed seats to continue

Possible disincentive to co-operate or compromise if pattern of unopposed seats continues because incumbents are unlikely to lose their seats (like Congress)

Potential that council members will focus on individual district and de-emphasize what is good for the city as a whole

Focusing on individual districts may lead to infighting

Lack of qualified candidates willing to run in some districts

May require city to create and provide support for neighborhood associations (costs time and \$\$)

Reduced impact of individual voters – only vote for 1/7 of the Council instead of all 7

Potential for a lower number of voters in one district will have a voice equal to that of a greater number of voters in another district

We do not have strong neighborhood involvement or engagement throughout the city, which begs the question of whether districts that are developed will have much in common.

We could have a situation where we could potentially weaken the effectiveness of the council by replacing engaged, qualified council members with individuals with little knowledge of public process. The relative ineffectiveness of the council after the switch from a commission form resulted in the disastrous Town Toyota Center decision that nearly destroyed the city.

At Large:

Pro:

[From National League of Cities.] At-large election proponents favor having council members elected by the entire city because:

- Council members in an at-large system can be more impartial, rise above the limited perspective of a single district and concern themselves with the problems of the whole community.
- Vote trading between council members is minimized.
- Better-qualified individuals are elected to the council because the candidate pool is larger.

Allows voters to vote for all City Council positions

Gives residents full choice of City Council members to approach about an issue, where under a district system one may be directed to only the representative from their district

More likely to have one or more candidates to run for each City Council position. (Comment – I don't know that this is true)

Each Council member is likely to focus on the entire city's welfare

Con:

[From National League of Cities.] At-large elections can weaken the representation of particular groups, especially if the group does not have a citywide base of operations or is an ethnic or racial group concentrated in a specific ward.

May not increase possibility that seats will have multiple candidates file

May not increase citizen engagement

Leaves City vulnerable to legal challenge and potentially large legal bills to defend a system that has been found to suppress the voting rights of minorities

Power to elect council members could be concentrated in a few people (such as the people who directed Port campaigns for 2 candidates in 2015)

Appendix 5

- Washington cities electing councils by district
- Wenatchee comparable cities council election method

Washington Cities with Councils Elected by Districts
 Aberdeen
 Bremerton
 Hoquiam
 Spokane
 Yakima

Washington Cities with Councils Elected with a Combination of Districts and At-Large Positions
 Anacortes
 Bainbridge Island
 Bellingham
 Blaine
 Burlington
 Camas
 Centralia
 Chehalis
 Chelan
 Mount Vernon
 Pasco
 Pullman
 Puyallup
 Seattle
 Sedro-Woolley
 Tacoma

Comparable Cities to Wenatchee - Method of Electing Councils

<u>City</u>	<u>At-Large</u>	<u>Districts Only</u>	<u>Combination</u>	<u>Area (square miles)</u>	<u>Population</u>	<u>% Latino</u>
Wenatchee	x			7.77	33,230	29%
Bremerton		7 Districts		32.29	39,410	10%
Camas			3 districts with 2 representatives; 1 at-large	12.60	21,210	4%
Longview	x			14.10	37,130	10%
Mill Creek	x			3.60	19,760	6%
Moses Lake	x			18.75	22,020	30%
Mount Vernon			2 districts with 3 representatives; 1 at-large	12.61	33,530	34%
Mukilteo	x			9.40	20,900	4%
Oak Harbor	x			9.47	22,000	9%
Port Angeles	x			14.52	19,140	4%
Pullman			3 districts with 2 representatives; 1 at-large	9.88	32,110	5%
Tumwater	x			14.49	19,100	6%
University Place	x			8.56	31,720	7%
Walla Walla	x			10.80	33,390	22%

Appendix 6

- Yakima Order for Summary Judgment dated August 22, 2014
- Yakima Final Injunction and Remedial Districting Plan dated February 17, 2015
- January 2016 Washington Attorney General opinion regarding Pasco
- RCW 35.18.020 regarding voting by districts

1 Herren, Jr., Bryan L. Sells and Victor J. Williamson of the Voting Rights Section
2 of the Civil Rights Division of the U.S. Department of Justice, filed a Statement of
3 Interest pursuant to 28 U.S.C. § 517. ECF No. 99. Subsequent to the hearing, the
4 parties filed responses to the United States' Statement of Interest (ECF Nos. 100 &
5 106). The Court has reviewed the briefing and the record and files herein and is
6 fully informed.

7 BACKGROUND

8 This is an action to remedy an alleged violation of Section 2 of the Voting
9 Rights Act, 42 U.S.C. § 1973. Plaintiffs contend that the City of Yakima's at-large
10 voting system deprives Latinos of the right to elect representatives of their
11 choosing to the Yakima City Council. In support of this contention, Plaintiffs note,
12 *inter alia*, that no Latino has ever been elected to the City Council in the 37-year
13 history of the current system—despite the fact that Latinos account for
14 approximately one-third of the City's voting-age population and approximately
15 one-quarter of its citizen voting-age population. Plaintiffs ask the Court to enjoin
16 the City from utilizing its current voting system in future elections and to order that
17 the City implement a system that complies with Section 2.

18 The parties have filed cross-motions for summary judgment. For the reasons
19 discussed below, the Court concludes that there are no genuine issues of material
20 fact concerning the dilutive effect of the City's election system on Latino votes.

1 Because City Council elections are not “equally open to participation” by members
2 of the Latino minority, Plaintiffs are entitled to summary judgment.

3
4 **FACTS**

5 The City of Yakima (“City”) utilizes an at-large election system to fill the
6 seven seats on the Yakima City Council. Four of these seats, designated Positions
7 1, 2, 3 and 4, have residency restrictions attached. Candidates running for one of
8 these seats must reside in a geographic district corresponding to their seat number.
9 The remaining three seats, designated Positions 5, 6 and 7, have no residency
10 restriction. Candidates running for one of these seats may reside anywhere within
11 the City. Each seat is allotted a four-year term. Terms are staggered, with
12 elections to fill seats with expiring terms held every two years.

13 Elections follow a “numbered post” format, meaning that candidates file for
14 a particular seat and compete only against other candidates who are running for the
15 same seat. In the event that more than two candidates file for a particular seat, the
16 City conducts a primary election to narrow the field to the top two candidates. If
17 the seat is one of the four residency-restricted seats, only voters who reside in the
18 district corresponding to that seat may vote in the primary. If the seat is
19 unrestricted, all voters residing within the City may cast a vote. The two
20 candidates with the highest vote totals in the primary will then advance to a general
election.

1 The general election is essentially a collection of individual at-large races
2 (three or four, depending upon which terms are expiring in a given election year).
3 The two candidates running for each seat compete head-to-head, with the candidate
4 amassing the most votes winning the seat. All registered voters may cast one vote
5 in each head-to-head race, regardless of whether the seat at issue is residency-
6 restricted. In order to win election under this system, a candidate must garner a
7 simple majority of the votes cast in his or her head-to-head race.

8 SUMMARY JUDGMENT STANDARD

9 Summary judgment may be granted to a moving party who demonstrates
10 “that there is no genuine dispute as to any material fact and that the movant is
11 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving party
12 bears the initial burden of demonstrating the absence of any genuine issues of
13 material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then
14 shifts to the non-moving party to identify specific genuine issues of material fact
15 which must be decided by a jury. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S.
16 242, 256 (1986). “The mere existence of a scintilla of evidence in support of the
17 plaintiff’s position will be insufficient; there must be evidence on which the jury
18 could reasonably find for the plaintiff.” *Id.* at 252.

19 For purposes of summary judgment, a fact is “material” if it might affect the
20 outcome of the suit under the governing law. *Id.* at 248. A dispute concerning any

1 such fact is “genuine” only where the evidence is such that a reasonable jury could
2 find in favor of the non-moving party. *Id.* In ruling upon a summary judgment
3 motion, a court must construe the facts, as well as all rational inferences therefrom,
4 in the light most favorable to the non-moving party. *Scott v. Harris*, 550 U.S. 372,
5 378 (2007). Only evidence which would be admissible at trial may be considered.
6 *Orr v. Bank of America, NT & SA*, 285 F.3d 764 (9th Cir. 2002).

7 DISCUSSION

8 **I. Overview of Section 2 of the Voting Rights Act**

9 Section 2 of the Voting Rights Act of 1965 (“VRA”), prohibits states and
10 their political subdivisions from utilizing voting practices or procedures which
11 result in “a denial or abridgement of the right of any citizen of the United States to
12 vote on account of race or color.” 42 U.S.C. § 1973(a). This legislation is
13 designed to “help effectuate the Fifteenth Amendment’s guarantee that no citizen’s
14 vote shall ‘be denied or abridged . . . on account of race, color, or previous
15 condition of servitude.” *Voinovich v. Quilter*, 507 U.S. 146, 152 (1993) (quoting
16 U.S. Const. amend. XV, § 1). A violation of § 2 occurs when, based upon the
17 totality of the circumstances, the challenged electoral process is “not equally open
18 to participation by members of a [racial minority group] in that its members have
19 less opportunity than other members of the electorate *to participate in the political*
20 *process and to elect representatives of their choice.*” 42 U.S.C. § 1973(b)

1 (emphasis added). “The essence of a § 2 claim is that a certain electoral law,
2 practice, or structure interacts with social and historical conditions to cause an
3 inequality in the opportunities enjoyed by [minority] and [majority] voters to elect
4 their preferred representatives.” *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986).

5 Section 2 does not confer a right to proportional representation, but rather a
6 right to participate equally in the political process. See 42 U.S.C. § 1973(b)
7 (“[N]othing in this section establishes a right to have members of a protected class
8 elected in numbers equal to their proportion in the population.”); *Gingles*, 478 U.S.
9 at 79 (core inquiry in § 2 case is “whether the political process is equally open to
10 minority voters”); *Ruiz v. City of Santa Maria*, 160 F.3d 543, 549 (9th Cir. 1998)
11 (“Section 2 guarantees a fair *process*, not an equal *result*.”) (emphasis in original).
12 For this reason, claims brought under § 2 are commonly referred to as “vote
13 dilution” claims.

14 *Gingles* is the seminal case applying § 2. In *Gingles*, the Supreme Court
15 identified three “necessary preconditions” which a plaintiff must satisfy in order to
16 proceed with a vote dilution claim. First, the plaintiff must demonstrate that his or
17 her minority group is “sufficiently large and geographically compact to constitute a
18 majority in a single-member [voting] district.” *Gingles*, 478 U.S. at 50. Second,
19 he or she must establish that the minority group is “politically cohesive.” *Id.* at 51.
20 Third, the plaintiff must “demonstrate that the white majority votes sufficiently as

1 a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” *Id.* In
2 other words, a § 2 plaintiff must make a prima facie showing that “a bloc voting
3 majority [will] *usually* be able to defeat candidates supported by a politically
4 cohesive, geographically insular minority group.” *Id.* at 49 (emphasis in original).
5 The plaintiff is not required to demonstrate that the challenged system is *designed*
6 to discriminate against minority voters, or that the majority *intentionally* engages
7 in racial bloc voting; he or she need only show that the system has “the *effect* of
8 denying [the minority] the equal opportunity to elect its candidate of choice.”
9 *Voinovich*, 507 U.S. at 155 (emphasis in original); *see also Smith v. Salt River*
10 *Project Agr. Imp. & Power Dist.*, 109 F.3d 586, 594 (9th Cir. 1997) (“Section 2
11 requires proof only of a discriminatory result, not of discriminatory intent.”).

12 If the plaintiff satisfies each of the *Gingles* preconditions, he or she must
13 then prove that, under “the totality of [the] circumstances,” minority voters have
14 less opportunity than members of the majority group to participate in the political
15 process and to elect representatives of their choice. 42 U.S.C. § 1973(b). *Gingles*
16 identifies seven factors relevant to this consideration, each of which is drawn from
17 a report of the Senate Judiciary Committee accompanying the 1982 amendments to
18 the VRA. These so-called “Senate Factors” are as follows:

- 19 (1) The history of voting-related discrimination in the jurisdiction;
- 20 (2) The extent to which voting in the elections of the jurisdiction is
racially polarized;

- 1
- 2 (3) The extent to which the jurisdiction has used voting practices or
- 3 procedures that tend to enhance the opportunity for discrimination
- 4 against the minority group, such as unusually large election
- 5 districts, majority vote requirements, and prohibitions against
- 6 bullet voting;
- 7 (4) The exclusion of members of the minority group from candidate
- 8 slating processes;
- 9 (5) The extent to which minority group members bear the effects of
- 10 past discrimination in areas such as education, employment, and
- 11 health, which hinder their ability to participate effectively in the
- 12 political process;
- 13 (6) The use of overt or subtle racial appeals in political campaigns;
- 14 and
- 15 (7) The extent to which members of the minority group have been
- 16 elected to public office in the jurisdiction.

17 *Gingles*, 478 U.S. at 44-45. When relevant to the particular claim being asserted, a

18 court may also consider the extent to which elected officials have been responsive

19 to the particularized needs of the minority group, and the policy underlying the

20 challenged voting practice or procedures. *Id.* at 45.

The Senate Factors “are neither comprehensive nor exclusive,” and other

relevant factors may always be considered. *Id.* Further, “there is no requirement

that any particular number of factors be proved, or that a majority of them point

one way or the other.” *Id.* (citation omitted). The ultimate inquiry is whether,

under the totality of the circumstances, the challenged electoral process “is equally

1 open to minority voters.” *Id.* at 79 (citation omitted). This inquiry requires both a
2 “searching practical evaluation of the past and present reality,” and an “intensely
3 local appraisal of the design and impact of the contested electoral mechanisms.”
4 *Id.* (citation omitted). Once again, a discriminatory *result* is all that is required;
5 intent to discriminate is not a relevant consideration. *Voinovich*, 507 U.S. at 155;
6 *Smith*, 109 F.3d at 594.

7 **II. Expert Witness Challenges**

8 **A. Motion to Exclude Dr. Thernstrom**

9 Plaintiffs move to exclude the testimony of Dr. Stephan Thernstrom,
10 Defendants’ Senate Factors expert, on the grounds that (1) Dr. Thernstrom is not
11 qualified to opine about racial dynamics and socio-economic disparities between
12 Latinos and non-Latinos in Yakima; (2) his opinions are not adequately supported
13 by objective facts and data; and (3) his conclusions are not the product of reliable
14 principles and methods. Admissibility of expert witness testimony is governed by
15 Federal Rule of Evidence 702. The rule provides:

16 A witness who is qualified as an expert by knowledge, skill,
17 experience, training, or education may testify in the form of an
18 opinion or otherwise if: (a) the expert’s scientific, technical, or other
19 specialized knowledge will help the trier of fact to understand the
20 evidence or to determine a fact in issue; (b) the testimony is based on
sufficient facts or data; (c) the testimony is the product of reliable
principles and methods; and (d) the expert has reliably applied the
principles and methods to the facts of the case.

1 Fed. R. Evid. 702.

2 In *Daubert v. Merrell Dow Pharmaceuticals*, the Supreme Court directed
3 trial courts to perform a “gatekeeping” function to ensure that expert testimony
4 conforms to Rule 702’s admissibility requirements. 509 U.S. 579, 597 (1993).
5 *Daubert* identifies four non-exclusive factors a court may consider in assessing the
6 relevance and reliability of expert testimony: (1) whether a theory or technique has
7 been tested; (2) whether the theory or technique has been subjected to peer review
8 and publication; (3) the known or potential error rate and the existence and
9 maintenance of standards controlling the theory or technique’s operation; and (4)
10 the extent to which a known technique or theory has gained general acceptance
11 within a relevant scientific community. *Id.* at 593-94. These factors are not to be
12 applied as a “definitive checklist or test,” but rather as guideposts which “may or
13 may not be pertinent in assessing reliability, depending on the nature of the issue,
14 the expert’s particular expertise, and the subject of his testimony.” *Kumho Tire*
15 *Co., Ltd. v. Carmichael*, 526 U.S. 137, 150 (1999). The ultimate objective is to
16 “make certain that an expert, whether basing testimony upon professional studies
17 or personal experience, employs in the courtroom the same level of intellectual
18 rigor that characterizes the practice of an expert in the relevant field.” *Id.* at 152.

19 Having reviewed the record, the Court concludes that Dr. Thernstrom’s
20 opinions are admissible for the limited purpose for which they are offered. The

1 primary focus of Dr. Thernstrom's testimony is to point out flaws in the opinions
2 of Plaintiffs' Senate Factors experts, Dr. Luis Fraga and Dr. Frances Contreras,
3 about how racial dynamics and socio-economic disparities have the effect of
4 denying Latinos equal access to the electoral process. *See* ECF No. 63-1, Exhibit
5 B, at 2. In other words, Dr. Thernstrom's only objective is to "poke holes" in Dr.
6 Fraga's and Dr. Contreras's theories; with a handful of inconsequential exceptions,
7 he does not offer his own substantive opinions about the extent to which Latinos in
8 Yakima are disadvantaged in accessing the electoral process. *See, e.g.*, Thernstrom
9 Report, ECF No. 63-1, Exhibit B, at 43 ("What caused this [drop in median
10 household income among Latinos] in the opening decade of this century? Latinos
11 were catching up in the 1990s and then falling back in the 2000-2010 decade.
12 Why? I don't have enough evidence to be sure of the answer, but Dr. Fraga's
13 generalized discrimination theory is too vague to be of any use."). The Court finds
14 that Dr. Thernstrom is qualified by his training and experience as a tenured
15 professor, academic researcher, and frequently published author to offer these
16 opinions. The Court further finds that his opinions are grounded in sufficient data
17 and are derived from reasonably reliable methodology. Accordingly, Plaintiffs'
18 motion to exclude Dr. Thernstrom's testimony is denied.

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1 B. Motion to Strike Second Supplemental Report of Dr. Morrison

2 Plaintiffs move to strike the Second Supplemental Declaration of Dr. Peter
3 Morrison on the ground that the opinions offered therein were disclosed after the
4 discovery cutoff and in support of a reply memorandum to which Plaintiffs had no
5 opportunity to respond. ECF No. 89. Although the subject declaration was indeed
6 untimely and submitted under circumstances that did not permit a response, the
7 Court finds that Plaintiffs have not been prejudiced. The sole purpose of the
8 declaration is to demonstrate that Plaintiffs did not balance “electoral equality”
9 among districts when creating their proposed districting plans. ECF No. 86-1.
10 There is no factual dispute on this score, as Plaintiffs’ expert, Mr. William Cooper,
11 concedes that he attempted to equalize districts on the basis of total population
12 rather than eligible voting population. The only disputed issue involves a purely
13 legal question: whether districts which are approximately equal in total population,
14 but which differ in eligible voting population, violate the “one person, one vote”
15 principle embodied in the Equal Protection Clause. For the reasons discussed in
16 Section III.A, *infra*, the Court concludes that any disparities among districts in
17 eligible voting population are not fatal to Plaintiffs’ claim. To the extent a better
18 balancing of electoral equality among districts is required, it can be accomplished
19 at the remedial stage of these proceedings. The motion to strike Dr. Morrison’s
20 Second Supplemental Report is therefore denied.

1 **III. Plaintiffs Have Satisfied the *Gingles* Preconditions**

2 A. Latinos are a “sufficiently large and geographically compact” minority
3 group to form a majority in a hypothetical single-member voting district.

4 The first *Gingles* precondition requires that a minority group be “sufficiently
5 large and geographically compact” to form a majority of voters in a single-member
6 district. *Gingles*, 478 U.S. at 50. Stated more plainly, the question is: Are there
7 enough minority voters, and are they sufficiently concentrated geographically, to
8 form a majority of all eligible voters within a single-member voting district? If the
9 answer is yes, the first *Gingles* precondition is satisfied; if the answer is no, the
10 entire claim fails as a matter of law. The plaintiff must draw a hypothetical district
11 which satisfies these requirements using real demographic data.

12 The exercise of requiring a § 2 plaintiff to draw a hypothetical “minority”
13 district serves two related purposes. First, it serves to link the alleged injury (the
14 minority group’s inability to elect representatives of its choosing) to the alleged
15 cause (the challenged voting system). As the Supreme Court explained in *Gingles*:

16 Unless minority voters possess the *potential* to elect representatives in
17 the absence of the challenged structure or practice, they cannot claim
18 to have been injured by that structure or practice. . . . Thus, if the
19 minority group is spread evenly throughout a multimember district, or
20 if, although geographically compact, the minority group is so small in
relation to the surrounding white population that it could not
constitute a majority in a single-member district, these minority voters
cannot maintain that they would have been able to elect
representatives of their choice in the absence of the [challenged]
electoral structure.

1
2 478 U.S. at 50 n.17 (emphasis in original).

3 Second, drawing a minority district in which minority voters represent more
4 than 50% of all eligible voters confirms that an effective remedy can be fashioned.
5 *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 480 (1997) (“Because the very
6 concept of vote dilution implies—and, indeed, necessitates—the existence of an
7 ‘undiluted’ practice against which the fact of dilution may be measured, a § 2
8 plaintiff must also postulate a reasonable alternative voting practice to serve as the
9 benchmark ‘undiluted’ voting practice.”); *Holder v. Hall*, 512 U.S. 874, 881 (1994)
10 (plurality opinion) (“[W]here there is no objective and workable standard for
11 choosing a reasonable benchmark by which to evaluate a challenged voting
12 practice, it follows that the voting practice cannot be challenged as dilutive
13 under § 2.”); *Barnett v. City of Chicago*, 141 F.3d 699, 702 (7th Cir. 1998), *cert.*
14 *denied*, 524 U.S. 954 (1998) (“[T]he plaintiff must show that there is a feasible
15 alternative to the defendant’s map, an alternative that does a better job of balancing
16 the relevant factors, although the fine-tuning of the alternative can be left to the
17 remedial stage of the litigation.”). In short, if no workable minority district can be
18 drawn, “there has neither been a wrong nor can there be a remedy.” *Grove v.*
19 *Emison*, 507 U.S. 25, 41 (1993).

1 Courts analyzing vote dilution claims under § 2 typically divide the first
2 *Gingles* precondition into two sub-criteria: numerosity and compactness. The
3 numerosity criterion is satisfied when minority voters form “a numerical, working
4 majority of the voting-age population” in the proposed district. *Bartlett v.*
5 *Strickland*, 556 U.S. 1, 13 (2009); *see also id.* at 19-20 (“[A] party asserting § 2
6 liability must show by a preponderance of the evidence that the minority
7 population in the potential election district is greater than 50 percent.”). In the
8 Ninth Circuit, the appropriate measure of “voting-age population” is the *citizen*
9 voting age population (“CVAP”)—*i.e.*, the number of persons who are actually
10 eligible to cast a vote. *Romero v. City of Pomona*, 883 F.2d 1418, 1425-26 (9th
11 Cir. 1989) (holding that “eligible minority voter population,” rather than total
12 minority population, is the better measure of numerosity under *Gingles* 1 because it
13 more accurately predicts whether minority voters could *actually* elect
14 representatives of their choosing if the challenged voting system were abolished),
15 *abrogated on other grounds by Townsend v. Holman Consulting Corp.*, 929 F.2d
16 1358, 1363 (9th Cir. 1990) (en banc); *Cano v. Davis*, 211 F. Supp. 2d 1208, 1233
17 (C.D. Cal. 2002) *aff’d*, 537 U.S. 1100 (2003) (“The Ninth Circuit, along with every
18 other circuit to consider the issue, has held that CVAP is the appropriate measure
19 to use in determining whether an additional effective majority-minority district can
20 be created.”) (citing *Romero*, 883 F.2d at 1426).

1 Compactness, the second criterion, refers to the geographical dispersion of
2 minority voters within the jurisdiction. *League of United Latin Am. Citizens v.*
3 *Perry (LULAC)*, 548 U.S. 399, 433 (2006). In essence, this criterion measures
4 whether minority voters are sufficiently concentrated geographically to facilitate
5 the creation of a single voting district in which minority voters outnumber majority
6 voters. *Gingles*, 478 U.S. at 50 & n.17. Compactness in the § 2 context is not to
7 be confused with compactness in the context of a challenge under the Equal
8 Protection Clause to the manner in which voting districts have been apportioned.
9 *LULAC*, 548 U.S. at 433. In the equal protection context, “compactness focuses on
10 the contours of district lines to determine whether race was the predominant factor
11 in drawing those lines”—*i.e.*, to determine whether voting districts were
12 deliberately “gerrymandered” along racial lines. *Id.* The compactness inquiry
13 under § 2, by contrast, focuses more generally on whether the proposed minority
14 district reasonably comports with “traditional districting principles” such as
15 contiguousness, population equality, maintaining communities of interest,
16 respecting traditional boundaries, and providing protection to incumbents. *See id.*;
17 *Shaw v. Reno*, 509 U.S. 630, 647 (1993); *Easley v. Cromartie*, 532 U.S. 234
18 (2001).

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1 1. *Numerosity*

2 Having thoroughly reviewed the record, the Court concludes that Plaintiffs
3 have carried their burden of establishing that a district can be drawn in which the
4 Latino citizen voting age population (“LCVAP”) comprises more than 50% of the
5 district’s total eligible voters. Using the most recent data available from the U.S.
6 Census Bureau’s *American Community Survey* (“ACS”),¹ Plaintiffs’ expert, Mr.
7 William Cooper, generated five separate “plans” which break the City of Yakima
8 into seven individual voting districts. The parties agree that this is the appropriate
9 number of districts because it corresponds to the number of seats on the City
10 Council. Two of these plans, designated “Illustrative Plan 1” and “Illustrative Plan
11 2,” were prepared using Mr. Cooper’s preferred statistical methodology (referred
12 to by Mr. Cooper as “Method 1”). The other three plans, labeled “Hypothetical
13 Plan A,” “Hypothetical Plan B” and “Hypothetical Plan C,” were prepared using
14 statistical methodology favored by Defendants’ *Gingles* 1 expert, Dr. Peter
15 Morrison (“Method 2”). The following represents the LCVAP in one of the seven
16
17

18 ¹ Mr. Cooper’s Second Supplemental Declaration analyzes data published in the
19 *2008-2012 American Community Survey 5-Year Estimates*. ECF No. 66-2 at ¶ 2 &
20 n.1.

1 hypothetical voting districts—“District 1”—across all five plans using both
 2 experts’ preferred statistical methodology:

Percentage of Eligible Latino Voters (“LCVAP”) in “District 1”		
	Method 1	Method 2
Illustrative Plan 1	54.51	52.52
Illustrative Plan 2	54.70	52.67
Hypothetical Plan A	55.53	53.27
Hypothetical Plan B	59.30	56.31
Hypothetical Plan C	60.91	57.48

10 Cooper Second Supplemental Decl., ECF No. 66-2, Exhibit 5, at ¶ 11, Fig. 2.

11 As the table above clearly illustrates, there are at least five possible single-
 12 member voting districts which satisfy the numerosity requirement. Given that
 13 three of these options utilize the statistical methodology favored by Defendants’
 14 own expert, there are no genuine issues of material fact for trial as to numerosity.²

15 ² The Court need not resolve the dispute concerning statistical methodology at this
 16 juncture. To establish liability for a § 2 violation, Plaintiffs need only demonstrate
 17 that it is *possible* to draw a minority district which satisfies the *Gingles* 1 criteria.
 18 That has been established using both Mr. Cooper’s and Dr. Morrison’s preferred
 19 statistical methods. To the extent that there remains a live dispute about which
 20 method is “better,” the Court will resolve it during the remedy phase of the case.

1 Moreover, to the extent that Dr. Morrison disputes the accuracy of the underlying
2 ACS data, *see* Morrison Decl., ECF No. 79-2, Exhibit J, at ¶ 36-37, his objection is
3 not well-taken. Although U.S. Census data may not be perfectly accurate, it is
4 routinely relied upon in § 2 cases. *See, e.g., Bartlett, supra; Growe, supra;*
5 *Romero, supra.* In any event, Defendants cannot be heard to complain about the
6 accuracy of the ACS data because they have neither identified nor analyzed a more
7 reliable data set. *See Benavidez v. City of Irving*, 638 F. Supp. 2d 709, 729-30
8 (N.D. Tex. 2009) (“[I]n Section 2 cases, Census figures are presumptively accurate
9 until proven otherwise.”) (citing *Valdespino v. Alamo Heights Indep. Sch. Dist.*,
10 168 F.3d 848, 853-54 (5th Cir. 1999)). Accordingly, the Court concludes that
11 numerosity has been conclusively established on a materially undisputed factual
12 record.

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16 *See Barnett*, 141 F.3d at 702 (“The plaintiff is not required to propose an
17 alternative map that is ‘final’ in the ‘final offer’ arbitration sense, where the parties
18 cannot modify their offers once they have denominated them final and the tribunal
19 is confined to choosing which of the final offers is better and cannot formulate its
20 own, best remedy.”).

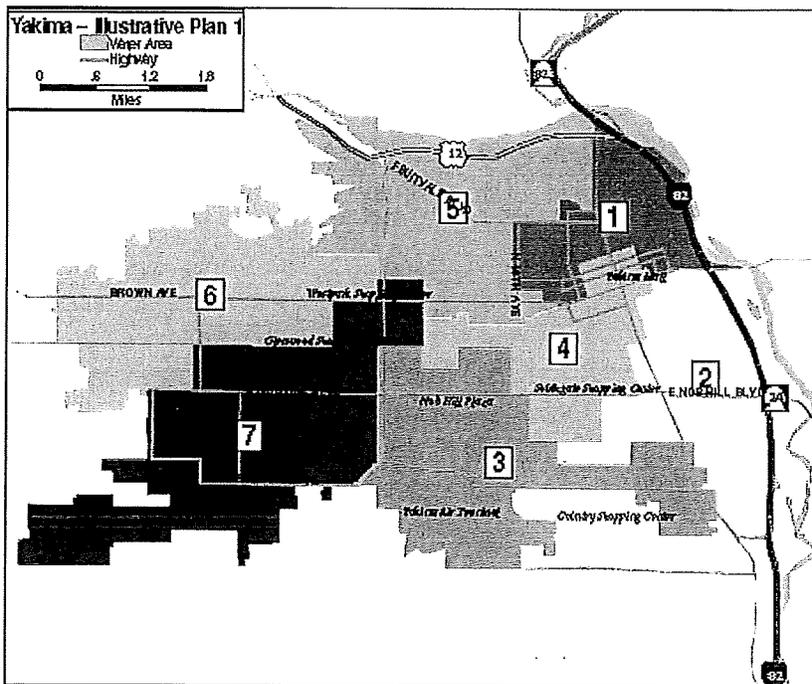
1 2. *Compactness*

2 Plaintiffs have also demonstrated that the LCVAP is sufficiently “compact”
3 to facilitate the creation of a reasonably compact minority district. At the outset, it
4 bears noting that a substantial majority of the City of Yakima’s Latino population
5 lives in an area east of 16th Avenue. This area encompasses roughly one-third of
6 the City’s entire geographic area (9.78 square miles out of 28 square miles total).
7 Cooper Decl., ECF No. 66-1, Exhibit 4, at ¶ 27 & Fig. 5. Census data from 2010
8 reveals that nearly three-fourths (72.54%) of the City’s Latino population resides
9 in this area. *Id.* at ¶ 27 & Fig. 5. Not surprisingly, this area is also home to a
10 substantial portion of the Latino voting age citizen population, as evidenced by the
11 fact that all 2010 Census block groups with a LCVAP of 40% or higher are located
12 east of 16th Avenue. *Id.* at ¶ 27 & Fig. 6.

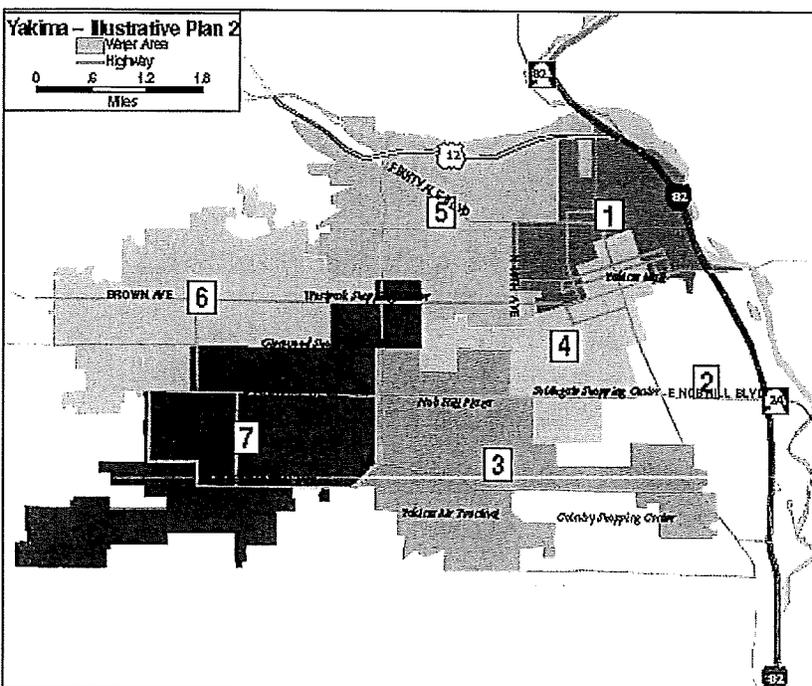
13 It is not difficult to create a sufficiently compact minority district from an
14 area with such a high percentage of eligible Latino voters. Indeed, Mr. Cooper has
15 generated several compelling examples. *See, e.g.*, Cooper Decl., ECF No. 66-1,
16 Exhibit 4, at ¶¶ 50-56 & Figs. 10, 11; Cooper Supplemental Decl., ECF No. 66-2,
17 Exhibit 6, at ¶¶ 27-32 & Fig. 8. As Plaintiffs correctly note, the compactness of
18 the minority districts in these proposals is easily confirmed by simply looking at
19 the maps of the proposed districts (District 1 in orange is the minority district):
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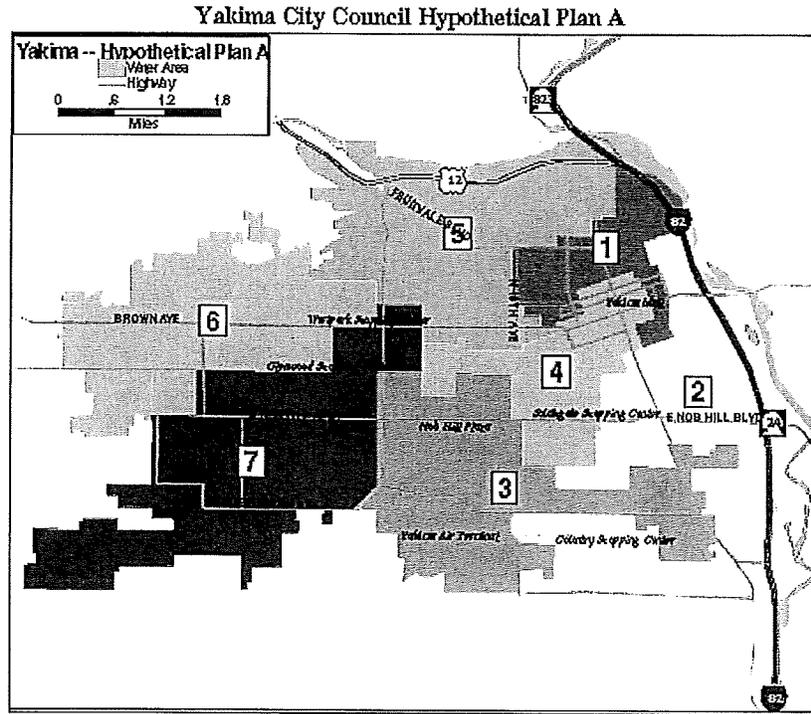
Yakima City Council Illustrative Plan 1



Yakima City Council Illustrative Plan 2



1 Even Hypothetical Plan A, which Mr. Cooper created using Dr. Morrison's
2 preferred statistical methodology, contains a minority voting district that is
3 reasonably compact on its face:



13 Moreover, Mr. Cooper's statistical analysis confirms that the proposed
14 districts are sufficiently compact. Using a statistical measure known as the Reock
15 test,³ Mr. Cooper determined that the districts in each of his five proposed plans

16 _____
17 ³ Mr. Cooper describes the Reock test as follows:

18 The Reock test is an area-based measure that compares each district to
19 a circle, which is considered to be the most compact shape possible.
20 For each district, the Reock test computes the ratio of the area of the
district to the area of the minimum enclosing circle for the district.
The measure is always between 0 and 1, with 1 being the most
compact. The Reock test computes one number for each district and
the minimum, maximum, mean and standard deviation for the plan.

1 were (1) more compact on average than the districts in the existing City of Yakima
2 2011 Plan; (2) more compact than one-quarter of the districts in the Washington
3 State Legislature Plan; and (3) comparably compact to the plans utilized in Pasco,
4 Spokane and Tacoma. Cooper Second Supplemental Decl., ECF No. 66-2, Exhibit
5 5, at ¶¶ 15-19. With this compelling and undisputed evidence, Plaintiffs have
6 satisfied the compactness component of the first *Gingles* precondition.

7 Defendants disagree with the above conclusion on four separate grounds.
8 First, they argue that Plaintiffs have ignored the principle of “electoral equality,”
9 which Defendants describe as the principle that “a citizen’s vote should carry about
10 the same weight as any other citizen’s vote regardless of where a citizen resides.”
11 ECF No. 77 at 10 (citing *Reynolds v. Sims*, 377 U.S. 533, 579 (1964)). In support
12 of this argument, Defendants note that Plaintiffs’ seven proposed voting districts,
13 while roughly equivalent in total population size, are disproportionate in terms of
14 *citizen voting-age* population. According to Defendants, this imbalance “would
15 invariably cause the votes of eligible voters in [the minority district] to carry far
16 more weight than a vote in another district.” Morrison Decl., ECF No. 79-2,
17 Exhibit J, at ¶ 39. Dr. Morrison explains the situation as follows:

18 [A]ny Latino majority-CVAP district encompassing 1/7th (14.3%) of
19 the City’s *total* population can encompass at most 8.4% of the City’s

20 Cooper Second Supplemental Decl., ECF No. 66-2, Exhibit 5, at 7 n.7.

1 *voting-age citizen population*. That 8.4% of eligible voters would
2 necessarily exercise 14.3% of the power in electing City Council
3 members—in effect, “one person, 1.7 votes.” Conversely, the
4 remaining 91.6% of the eligible voters across the City would exercise
5 only 85.7% of the power in electing City Council members—*i.e.*, “1
6 person, 0.94 votes.”

7 Morrison Decl., ECF No. 79-2, Exhibit J, at ¶ 39 (emphasis in original). Based
8 upon this ostensible imbalance in “voting power,” Defendants urge the Court to
9 deny Plaintiffs’ motion and grant summary judgment in their favor. ECF No. 77 at
10 11; ECF No. 67 at 5-15.

11 The Court is not persuaded that this alleged violation of the “one person, one
12 vote” principle requires dismissal of Plaintiffs’ claim. As Plaintiffs correctly note,
13 Defendants are short on authority for the proposition that an imbalance in citizen
14 voting-age population, as opposed to an imbalance in total population, is relevant
15 to the “one person, one vote” calculus. Indeed, *Reynolds v. Sims*, the primary case
16 on which Defendants rely, appears to foreclose such an argument:

17 By holding that as a federal constitutional requisite both houses of a
18 state legislature must be apportioned on a *population basis*, we mean
19 that the Equal Protection Clause requires that a State make an honest
20 and good faith effort to construct districts, in both houses of its
legislature, as nearly of *equal population* as is practicable.

* * *

Whatever the means of accomplishment, the overriding objective
must be *substantial equality of population among the various districts*,
so that the vote of any citizen is approximately equal in weight to that
of any other citizen in the State.

1
2 *Reynolds*, 377 U.S. at 577, 579 (emphasis added); *accord Mahan v. Howell*, 410
3 U.S. 315, 321 (1973) (identifying “equality of population among the districts” as
4 the basic constitutional principle embodied by the Equal Protection Clause);
5 *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964) (explaining that “equal representation
6 for equal numbers of people” is the objective of the Equal Protection Clause).

7 In fact, the only authority offered by Defendants that lends much credence to
8 their electoral equality argument is a dissenting opinion filed by Judge Kozinski in
9 *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990), *cert. denied*, 498
10 U.S. 1028 (1991). Judge Kozinski’s dissent attempts to answer the following
11 question: “Does a districting plan that gives different voting power to voters in
12 different parts of the county impair the one person one vote principle even though
13 raw population figures are roughly equal?” *Id.* at 780 (Kozinski, J., dissenting).
14 After reviewing a host of decisions applying the one person, one vote principle in
15 the context of an equal protection challenge, Judge Kozinski posits that “a careful
16 reading of the [Supreme] Court’s opinions suggests that equalizing the total
17 population is viewed not as an end in itself, but as a means of achieving electoral
18 equality”—that is to say, a balance of “voting power” among *eligible* voters. *Id.* at
19 783. In the end, however, Judge Kozinski acknowledges that there is equal support
20 for the contrary view: that population equality across voting districts is the

1 hallmark of the Equal Protection Clause’s one person, one vote guarantee. *Id.* at
2 785.

3 Defendants’ reliance upon the Kozinski dissent is unavailing for several
4 reasons. First, the dissent is a minority opinion which does not carry the force of
5 law. Whatever the merits of Judge Kozinski’s analysis, this Court is bound by the
6 majority opinion, which flatly rejects the argument that voting districts must be
7 equalized on the basis of eligible voters rather than total population. *Garza*, 918
8 F.2d at 774 (emphasis added); *accord Chen v. City of Houston*, 206 F.3d 502, 522-
9 23 (5th Cir. 2000), *cert. denied*, 532 U.S. 1046 (2001) (rejecting argument that
10 voting districts must be apportioned on the basis of citizen voting age population
11 (CVAP) rather than total population in order to comply with the Equal Protection
12 Clause).

13 Second, the Kozinski dissent is of limited relevance because it arises in the
14 context of an equal protection challenge. To prevail on an equal protection
15 challenge, a plaintiff must prove intentional dilution of a minority group’s voting
16 strength through racial gerrymandering. *See, e.g., Garza*, 918 F.2d at 766.
17 Because “[t]he *Gingles* requirements were articulated in a much different context
18 than [*Garza*] presents,” *id.* at 770, it would be inappropriate to import an equal
19 “voting power” requirement into the *Gingles* framework.

1 Third, the concerns identified by Judge Kozinski are not especially germane
2 at this stage of the proceedings. Whereas the Kozinski dissent speaks primarily to
3 the appropriate *remedy* for a violation of the Voting Rights Act and/or the Equal
4 Protection Clause, the singular focus of the instant cross-motions for summary
5 judgment is whether Plaintiffs can establish a § 2 violation in the first instance.
6 Although they are unwilling to admit it (*see* ECF No. 77 at 12), Defendants are
7 essentially arguing that *Gingles* requires Plaintiffs to come forward with a
8 districting plan that perfectly harmonizes every “traditional districting principle,”
9 including electoral equality, in order to establish liability. That is simply not the
10 law. *Gingles* requires a § 2 plaintiff to prove, by a preponderance of the evidence,
11 that it would be possible to draw a district in which eligible minority voters make
12 up more than 50% of the total voting population. In making that showing, the
13 plaintiff must submit a districting plan which *reasonably* incorporates traditional
14 districting principles such as contiguousness, maintaining population equality,
15 respect for traditional district boundaries, and protection of incumbents. The thrust
16 of the cases discussing the relevance of these traditional districting principles is
17 that the plaintiff may not ignore them altogether when drawing a minority district
18 that meets the compactness requirement. *See LULAC*, 548 U.S. at 433 (explaining
19 that the compactness inquiry “should *take into account* traditional districting
20 principles”) (emphasis added) (quotation and citation omitted); *Shaw*, 509 U.S. at

1 647 (explaining that total “disregard” of traditional districting principles would be
2 evidence of intentional discrimination in a racial gerrymandering challenge under
3 the Equal Protection Clause); *Bush v. Vera*, 517 U.S. 952, 979 (1996) (explaining
4 that “the district drawn in order to satisfy § 2 must not subordinate traditional
5 districting principles to race *substantially more than is ‘reasonably necessary’* to
6 avoid § 2 liability”) (emphasis added).

7 What the first *Gingles* precondition does not require is proof that a perfectly
8 harmonized districting plan can be created. Indeed, conditioning a § 2 plaintiff’s
9 right to relief upon his or her ability to create a letter-perfect districting plan would
10 put the cart before the horse. *See Clark v. Roemer*, 777 F. Supp. 445, 463 (M.D.
11 La. 1990) (“The determination of vote dilution begins with examining the existing
12 election district and the existing number of positions. Whether a court ought to
13 consider changes in either, as a part of the remedy *should a violation be found*, is
14 no part of determining whether there is vote dilution, for if there is vote dilution it
15 is the existing district which must be its cause[.]”) (emphasis in original). In short,
16 if the plaintiff proves by a preponderance of the evidence that a workable remedy
17 can be fashioned, the first *Gingles* precondition is satisfied.

18 Having carefully reviewed the record, the Court concludes that there are no
19 genuine issues of material fact for trial concerning Plaintiff’s ability to make this
20 showing. While Plaintiffs’ proposed districting plan might not perfectly harmonize

1 each and every traditional districting principle, it is simply not required to. In that
2 regard, “[i]t bears recalling . . . that for all the virtues of majority-minority districts
3 as remedial devices [for § 2 violations], they rely on a quintessentially race-
4 conscious calculus aptly described as the ‘politics of second best.’” *Johnson v. De*
5 *Grandy*, 512 U.S. 997, 1020 (1994) (citation omitted). To whatever extent the
6 proposal requires fine-tuning—including potential adjustments to achieve a higher
7 degree of electoral equality between districts—these minor adjustments can be
8 “left to the remedial stage of the litigation.” *Barnett*, 141 F.3d at 702.

9 Next, Defendants argue that Plaintiffs’ proposed districting plan “violates
10 Section 2’s prohibition on minority vote dilution.” ECF No. 67 at 1. Specifically,
11 Defendants contend that “the voting power of eligible voters from ethnic and racial
12 minorities (including Latinos) would be systematically devalued if they lived
13 outside of Districts 1 and 2.” ECF No. 67 at 13. In support of this argument, they
14 assert that “a State may not trade off the rights of some members of a racial group
15 against the rights of other members of that group.” ECF No. 67 at 14 (quoting
16 *LULAC*, 548 U.S. at 437). Because the proposed districting plan “confer[s]
17 additional voting power on certain members of a minority group while diluting the
18 voting power of other members,” Defendants argue, ECF No. 67 at 14, Plaintiffs
19 have “merely replace[d] one alleged violation of Section 2 with another sure
20 violation,” ECF No. 77 at 13.

1 This argument misapprehends the very essence of the § 2 remedy. If a
2 minority group successfully proves that a jurisdiction's voting system gives its
3 members less opportunity than majority voters to participate in the political process
4 and to elect representatives of their choosing, *see* 42 U.S.C. § 1973(b), it is entitled
5 to the creation of a single-member voting district in which eligible minority voters
6 account for more than 50% of the total voting population, *see, e.g. Bartlett*, 556
7 U.S. at 13. The purpose of creating such a district is to afford minority voters an
8 equal opportunity to meaningfully participate in the electoral process—in essence,
9 to remove any unfair structural barriers to minority voters being able to elect
10 representatives of their choosing. *Voinovich*, 507 U.S. at 154 (“Placing [minority]
11 voters in a district in which they constitute a sizeable and therefore ‘safe’ majority
12 ensures that they are able to elect their candidate of choice.”). Once that remedy is
13 implemented, there is no longer a violation of § 2. Hence, the argument that
14 Plaintiffs have merely “replaced one Section 2 violation with another” does not
15 hold water.

16 Moreover, creating a minority district to remedy a § 2 violation will *always*
17 result in a dilution of minority voting strength in the remaining districts. *See*
18 *Voinovich*, 507 U.S. at 154 (“[C]reating majority-black districts necessarily leaves
19 fewer black voters and therefore diminishes black voter influence in predominantly
20 white districts.”). The dilution of minority votes in other districts is an inevitable

1 byproduct of the § 2 remedy, and there is nothing improper about it. *See Gomez v.*
2 *City of Watsonville*, 863 F.2d 1407, 1414 (9th Cir. 1988) (“The fact that the
3 proposed remedy does not benefit all of the Hispanics in the City does not justify
4 denying any remedy at all.”); *Campos v. City of Baytown, Tex.*, 840 F.2d 1240,
5 1244 (5th Cir. 1988) (“The fact that there are members of the minority group
6 outside the minority district is immaterial. All that is required is that the minority
7 group be ‘sufficiently large and geographically compact to constitute a majority in
8 a single member district.’”) (emphasis in original) (quoting *Gingles*, 478 U.S. at
9 50). After all, if a finding of vote dilution among minorities residing in the non-
10 remedial district were sufficient to defeat a § 2 claim, it would be mathematically
11 impossible for a plaintiff to ever establish liability under the *Gingles* framework.

12 Finally, Defendants argue that Plaintiffs “unconstitutionally gerrymandered”
13 their proposed voting districts. ECF No. 67 at 15. This argument is essentially a
14 derivative of the “electoral equality” argument addressed above. *See* ECF No. 67
15 at 16 (arguing that the redistricting plans “establish that [Plaintiffs] made no
16 attempt whatsoever to balance electoral equality with other race-neutral traditional
17 districting principles,” and that “electoral equality was subordinated to [Plaintiffs’]
18 predominant goal of using ethnicity” to define the borders of their proposed
19 districts). As such, this argument is rejected for the reasons previously stated.

1 Illustrative Plan was drawn predominantly on racial lines . . . to
2 determine whether it passes strict scrutiny, the court must know
3 whether the district is necessary to avoid § 2 liability. Otherwise, the
4 court cannot evaluate whether a plan drawn primarily along racial
5 lines is nonetheless permissible because it does not “subordinate
6 traditional districting principles to race substantially more than is
7 ‘reasonably necessary’ to avoid § 2 liability.” *Vera*, 517 U.S. at 979.
8 In other words, the court must first determine whether *Gingles* is met
9 before ensuring that the proposed remedy complies with the Equal
10 Protection Clause.

11 *Ga. State Conference of NAACP v. Fayette Cnty. Bd. of Comm’rs*, 950 F. Supp. 2d
12 1294, 1304-06 (N.D. Ga. 2013).

13 For the reasons so cogently explained in *Fayette County*, the Court “will not
14 determine as part of the first *Gingles* inquiry whether [the proposed districting
15 plan] subordinates traditional redistricting principles to race.” 950 F. Supp. 2d at
16 1306. If Defendants believe that the present proposal cannot pass muster under the
17 Equal Protection Clause, they may raise that issue during the remedial phase of the
18 proceedings. As noted above, however, the Court questions whether a districting
19 plan that fails to balance voting strength among districts of approximately equal
20 population size would violate the one person, one vote mandate.

21 Plaintiffs’ motion for summary judgment on the first *Gingles* precondition is
22 granted. Defendants’ motion for summary judgment on the same is denied.

23 //

24 //

1 B. Latinos are a “politically cohesive” minority group.

2 The second *Gingles* precondition focuses on whether the minority group is
3 “politically cohesive.” *Gingles*, 478 U.S. at 51. The relevant inquiry is “whether
4 the minority group has expressed clear political preferences that are distinct from
5 those of the majority.” *Gomez*, 863 F.2d at 1415. To satisfy this requirement, the
6 plaintiff must demonstrate that “a significant number of minority group members
7 usually vote for the same candidates.” *Gingles*, 478 U.S. at 56. Political
8 cohesiveness must be proven with statistical evidence of historical voting patterns.
9 *See Gomez*, 863 F.2d at 1415 (“[W]hether a racial group is politically cohesive
10 depends on its *demonstrated propensity* to vote as a bloc for candidates or issues
11 popularly recognized as being affiliated with the group’s particularized interests”)
12 (emphasis in original) (quotation and citation omitted). Election results from
13 within the challenged voting system are most probative, although results from
14 “exogenous” elections may also be considered. *United States v. Blaine Cnty.*, 363
15 F.3d 897, 912 (9th Cir. 2004).

16 Plaintiffs have proffered statistical analyses performed by their voting
17 expert, Dr. Richard Engstrom, of the voting patterns of both Latinos and non-
18 Latinos in ten recent contests (nine elections and one ballot measure). These
19
20

1 contests were apparently selected because they featured a Latino candidate,⁴ or, in
2 the case of the ballot measure, an issue of presumed importance to Latinos. The
3 contests analyzed were as follows: (1) the 2009 City Council primary for Position
4 5; (2) the 2009 City Council general election for Position 5; (3) the 2009 City
5 Council primary for Position 7; (4) the 2009 City Council general election for
6 Position 7; (5) the 2011 City Council primary for Position 2; (6) the 2013 City
7 Council primary for Position 5; (7) the 2013 City Council primary for Position 7;
8 (8) the 2012 Supreme Court election for Position 8; (9) the 2013 Yakima School
9 Board general election; and (10) the 2011 vote on Proposition 1 (which involved a
10 proposal to change the voting system for City Council elections to a district-based
11 system with seven voting districts).

12 Using a statistical analysis known as ecological inference (“EI”), Dr.
13 Engstrom analyzed which candidates (both Latino and non-Latino) were favored
14 by which voting groups (both Latinos and non-Latinos) in each of the ten contests.
15 His analysis paints a clear picture of Latino voter cohesion. Five of the contests

16
17 ⁴ A candidate need not be a member of the minority group in order to qualify as a
18 “minority preferred” candidate for purposes of the political cohesiveness inquiry.
19 *Ruiz*, 160 F.3d at 551. “The minority community may prefer a white candidate just
20 as the white community may prefer a minority candidate.” *Id.*

1 analyzed—the 2009 City Council primary and general elections for Positions 5 and
2 7, the 2011 vote on Proposition 1, the 2013 School Board election and the 2012
3 Supreme Court election—are particularly illustrative.

4 *1. 2009 City Council Election (Position 5)*

5 Three candidates ran for Position 5 in the 2009 City Council election. The
6 candidates were Sonia Rodriguez, a Latina who had been appointed to serve as the
7 Position 5 representative prior to the election, and Sharon Madson and Dave Ettl,
8 both of whom are non-Latino. A primary election was held to narrow the field to
9 the top two candidates. Mr. Ettl and Ms. Rodriguez were the top two finishers,
10 having received 47.5% and 38.2% of the votes, respectively. Based upon his EI
11 analysis, Dr. Engstrom concluded that Ms. Rodriguez received an estimated **52.9%**
12 of votes cast by Latino voters. Ms. Rodriguez received only an estimated 37.3% of
13 votes cast by non-Latinos. Mr. Ettl, by contrast, received an estimated 49.4% of
14 votes cast by non-Latino voters.

15 Ms. Rodriguez and Mr. Ettl subsequently squared off in the general election
16 for Position 5. Ms. Rodriguez was again the candidate of choice among Latino
17 voters, having received an estimated **92.8%** of their votes. Among non-Latino
18 voters, Ms. Rodriguez received only an estimated 42.6% of the votes. Despite her
19 strong support among Latino voters, Ms. Rodriguez lost the election with only
20 47.8% of the total votes. Engstrom Report, ECF No. 66-1, Exhibit 2, at ¶¶ 17-19.

1 2. *2009 City Council Election (Position 7)*

2 There were four candidates for Position 7 in the 2009 City Council election.
3 Benjamin Soria, who is Latino, ran against Mitchell Smith, Bill Lover, and T.J.
4 Davis, all of whom are non-Latino. Mr. Lover and Mr. Soria finished first and
5 second in the top-two primary. Of the votes cast by Latino voters during this
6 primary, Mr. Soria received an estimated **59.5%**. Among the votes cast by non-
7 Latino voters, Mr. Soria received only an estimated 31.0%.

8 Mr. Soria was the strong favorite among Latino voters in the ensuing general
9 election, with an estimated **92.7%** of that group's votes. Despite this strong
10 support, Mr. Soria was defeated by a wide margin, having received only 35.0% of
11 the total votes cast. Mr. Soria received only an estimated 30.5% of votes cast by
12 non-Latino voters. Engstrom Report, ECF No. 66-1, Exhibit 2, at ¶¶ 20-22.

13 3. *2011 Vote on Proposition 1*

14 Proposition 1 involved a proposal to change the voting system for City
15 Council elections to a district-based system with one voting district for each of the
16 seven City Council seats. Dr. Engstrom's EI analysis revealed that Latino voters
17 overwhelmingly favored this proposal: an estimated **98.2%** voted for it. Non-
18 Latino voters, by contrast, did not favor the proposal; only an estimated 38.4%
19 voted in favor. Proposition 1 was ultimately defeated by a margin of 58.5% in
20 favor and 41.5% opposed. Engstrom Report, ECF No. 66-1, Exhibit 2, at ¶ 26.

1 4. *2013 School Board General Election*

2 Two candidates competed in the 2013 School Board general election:
3 Graciela Villanueva, a Latina, and Jeni Rice, a non-Latino. Ms. Villanueva had
4 been appointed to the School Board prior to the election. Although Ms. Rice
5 announced in September that she had withdrawn from the election, she ended up
6 winning the race with 61.2% of the total votes cast. Ms. Villanueva received an
7 estimated 70% of the votes cast by Latinos and only an estimated 35% of votes
8 cast by non-Latinos. Engstrom Supplemental Report, ECF No. 66-2, Exhibit 10, at
9 ¶ 9; Alford Supplemental Report, ECF No. 66-2, Exhibit 11, at 1-2.

10 5. *2012 Supreme Court Election*

11 Two candidates ran for Position 8 on the Washington Supreme Court in
12 2012: Steven González, a Latino, and Bruce Danielson, a non-Latino. This was a
13 state-wide, non-partisan election. Neither candidate had any strong ties to the City
14 of Yakima. Based upon his EI analysis, Dr. Engstrom concluded that Mr.
15 González received 63.2% of the votes cast by Latino voters residing within the
16 City of Yakima. Among non-Latino voters, by contrast, Mr. González received
17 only an estimated 36.9% of votes. Mr. González was beaten by Mr. Danielson in
18 Yakima, but fared much better statewide and won the election. Engstrom Report,
19 ECF No. 66-1, Exhibit 2, at ¶¶ 27-28.

1 The results above are plainly indicative of “a significant number of [Latino
2 voters] usually vot[ing] for the same candidates.” *Gingles*, 478 U.S. at 56. In each
3 of these contests, the Latino candidate or issue won more than 50% of the votes
4 cast by Latino voters. In the case of the 2009 City Council general elections for
5 Positions 5 and 7 and the 2011 vote on Proposition 1, Latino support of the Latino
6 candidate (issue) exceeded 90%. Tellingly, in only *one* of the ten contests
7 analyzed (the 2013 City Council primary for Position 7), did the Latino candidate
8 not garner a majority of votes cast by Latino voters. *See* Engstrom Supplemental
9 Report, ECF No. 66-2, Exhibit 10, at ¶ 6.

10 Defendants do not contest Dr. Engstrom’s mode of analysis. In fact, their
11 voting expert, Dr. John Alford, agrees that the EI method produces the most
12 accurate measure of voter preferences. Alford Dep., ECF No. 66-1, Exhibit 3, at
13 Tr. 101-04. Dr. Alford further acknowledges that Dr. Engstrom analyzed the best
14 available data and that his analysis is statistically sound. *Id.* at Tr. 104, 135, 179.
15 Nevertheless, Dr. Alford takes exception to Dr. Engstrom’s ultimate conclusion:
16 that the data reflect strong Latino voter cohesion. *Id.* at Tr. 134-35. In a nutshell,
17 Dr. Alford’s position is that the confidence intervals⁵ surrounding Dr. Engstrom’s

18 ⁵ A confidence interval is a statistical measure of reliability which provides a range
19 of values within which the actual value will fall 95% of the time. For example, if
20 Candidate A is estimated to have received 75% of the votes cast by Latinos with a

1 estimates of Latino candidate preferences are too broad to support a reliable
2 conclusion about whether Latino voters are politically cohesive. *See id.* at Tr. 117-
3 19, 134. In other words, Dr. Alford agrees with the *result* reached by Dr.
4 Engstrom—that Latino candidates (or issues) received more than 50% of votes cast
5 by Latinos in nine out of the ten contests analyzed—but disputes whether that
6 result is supported by enough raw data to warrant a conclusion that a significant
7 number of Latino voters usually vote for the same candidates (or issues).

8 Dr. Alford's concerns, while legitimate from a statistics standpoint, do not
9 defeat a finding of Latino voter cohesion. As an initial matter, all of the contests
10 which Dr. Alford identifies as having insufficiently reliable confidence intervals
11 are City Council *primary elections*. Alford Dep., ECF No. 66-1, Exhibit 3, at Tr.
12 117-18. This is significant because each of these primaries featured three or four
13 candidates, as opposed to only two candidates in the general elections. Because
14 the primary votes were spread across three or four candidates, there were fewer
15 data points per candidate to analyze than in the general elections. This resulted in
16

17 confidence interval of 60% to 90%, we can be confident, to a 95% degree of
18 certainty, that Candidate A did in fact receive between 60% and 90% of the Latino
19 votes. Thus, the narrower the confidence interval, the more reliable the estimate;
20 the broader the confidence interval, the less reliable the estimate.

1 broader confidence intervals. When votes were divided among the two surviving
 2 candidates in the general elections (in the two races in which Latino candidates
 3 advanced), the confidence intervals became much narrower:

<u>Results by Latino Candidate in 2009 City Council Elections</u>		
Estimated Percentage of Latino Votes (Confidence Interval)		
	Position 5 – Rodriguez	Position 7 - Soria
Primary	52.9 (15.1 – 82.5)	59.5 (16.5 – 83.8)
General	92.8 (77.2 – 99.2)	92.7 (74.1 – 98.4)

11 Engstrom Report, ECF No. 66-1, Exhibit 2, at 15. The significance of this data is
 12 that we can be confident, to a 95% degree of certainty, that the Latino candidate
 13 received *at least* three-quarters of the votes cast by Latino voters when the City
 14 Council seat was on the line in the general election.

15 Furthermore, the broad confidence intervals assailed by Dr. Alford can most
 16 likely be attributed to low Latino voter turnout. As Dr. Engstrom explains:

17 The confidence intervals reported . . . are narrower for the estimates of
 18 the non-Latino voter behavior than that of Latinos. This is to be
 19 expected given the differences in the relative presence of Latinos and
 20 non-Latinos across the precincts in Yakima. The percentage of all of
 the ballots returned that were returned by Latino voters in Yakima
 ranged from 2.9 [percent] to 10.4 [percent] in these elections, and the
 highest percentage of Latinos among those returning ballots in any of
 the precincts has ranged from 18.6 to 41.9 across the elections.

1 Engstrom Report, ECF No. 66-1, Exhibit 2, at ¶ 29. As Plaintiffs correctly note,
2 the Ninth Circuit has prohibited district courts from discounting statistics about a
3 minority group's candidate preferences on the basis of low voter turnout. *See*
4 *Gomez*, 863 F.2d at 1416 ("The district court erred by focusing on low minority
5 voter registration and turnout as evidence that the minority group was not
6 politically cohesive."). This makes good sense; "if low voter turnout could defeat
7 a section 2 claim, excluded minority voters would find themselves in a vicious
8 cycle: their exclusion from the political process would increase apathy, which in
9 turn would undermine their ability to bring a legal challenge to the discriminatory
10 practices, which would perpetuate low voter turnout, and so on." *Blaine Cnty.*, 363
11 F.3d at 911. In view of this authority, the Court respectfully declines Defendants'
12 invitation to reject Dr. Engstrom's analysis on the basis of the challenged
13 confidence intervals.

14 In sum, Plaintiffs have made a strong showing that Latino voters in Yakima
15 have "clear political preferences that are distinct from those of the majority,"
16 *Gomez*, 863 F.2d at 1415, and that a significant number of them "usually vote for
17 the same candidates," *Gingles*, 478 U.S. at 56. Because no rational factfinder
18 could conclude otherwise on this record, Plaintiffs are entitled to summary
19 judgment on the second *Gingles* precondition.

1 C. The non-Latino majority votes sufficiently as a bloc to enable it to usually
2 defeat the Latino minority's preferred candidate.

3 The third *Gingles* precondition focuses on whether the majority “votes
4 sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred
5 candidate. *Gingles*, 478 U.S. at 51. This inquiry is an extension of the second
6 *Gingles* precondition that essentially asks whether the majority can usually
7 overcome the political cohesiveness of the minority group. *Id.* at 56; *Growe*, 507
8 U.S. at 40. The degree of majority bloc voting required to satisfy this precondition
9 “will vary from district to district according to a number of factors.” *Gingles*, 478
10 U.S. at 56. In general, however, a majority bloc vote that “normally will defeat the
11 combined strength of minority support plus [majority] ‘crossover’ votes rises to the
12 level of legally significant [majority] bloc voting.” *Id.* Like political cohesiveness
13 of a minority group, majority bloc voting must be proven with historical data. *Id.*
14 at 46.

15 At the outset, it bears noting that no Latino candidate has *ever* been elected
16 to the Yakima City Council in the history of the current at-large voting system.
17 This is powerful evidence that the non-Latino majority will “usually” defeat the
18 Latino minority’s preferred candidate. Given that Latinos now represent roughly
19 one-third of the City’s voting age population and roughly one-quarter of its citizen
20 voting age population, one would certainly expect this group to have had *some*

1 success in electing a candidate of its choosing over the past 37 years if the political
2 process was “equally open to minority voters.” *Gingles*, 478 U.S. at 79.

3 The ability of the majority to “usually” defeat the minority’s preferred
4 candidate is also borne out by the statistical evidence. Once again, the 2009 City
5 Council races involving Ms. Rodriguez and Mr. Soria are instructive. As noted
6 above, Ms. Rodriguez initially ran against two non-Latinos, Sharon Madson and
7 Dave Ettl, in a top-two primary election. Ms. Rodriguez and Mr. Ettl advanced to
8 the general election with 38.2% and 47.5% of the total votes, respectively. Of the
9 votes cast by Latino voters, Ms. Rodriguez received an estimated 52.9%. Among
10 the votes cast by non-Latino voters, however, Ms. Rodriguez received only an
11 estimated 37.3%. In the ensuing general election, Ms. Rodriguez won an estimated
12 92.8% of the votes cast by Latino voters. Despite this overwhelming level of
13 support, Ms. Rodriguez lost the election, having received only 47.8% of the total
14 votes. This loss can be attributed to the fact that Ms. Rodriguez received only an
15 estimated 42.6% of “crossover” votes from non-Latino voters. Engstrom Report,
16 ECF No. 66-1, Exhibit 2, at ¶¶ 17-19.

17 Mr. Soria’s campaign played out in a similar fashion. In the primary, Mr.
18 Soria competed against three non-Latino candidates: Mitchell Smith, Bill Lover
19 and T.J. Davis. Mr. Lover finished first with 54.4% of the total votes, and Mr.
20 Soria finished second with 31.8%. Mr. Soria received an estimated 59.5% of votes

1 cast by Latino voters, but only an estimated 31.0% of the votes cast by non-
2 Latinos. In the general election, Mr. Soria garnered an estimated 92.7% of Latino
3 votes. Notwithstanding this strong support, Mr. Soria was defeated by the non-
4 Latino candidate, who garnered 65% of the total votes. Like Ms. Rodriguez, Mr.
5 Soria lost as a result of low crossover voting among non-Latino voters—in this
6 instance, an estimated 30.5%. Engstrom Report, ECF No. 66-1, Exhibit 2, at ¶¶
7 20-22.

8 Non-Latino bloc voting was also prevalent in many of the other contests.
9 Proposition 1 was almost universally supported by Latino voters in 2011 (98.2%),
10 but was defeated as a result of low crossover voting by non-Latinos (38.4%).
11 Engstrom Report, ECF No. 66-1, Exhibit 2, at ¶ 26. Justice Steven González was
12 the clear favorite among Latino voters in the 2012 Supreme Court election
13 (63.2%), but lost in Yakima due to low non-Latino crossover (36.9%). *Id.* at ¶¶
14 27-28. Graciela Villanueva had strong support among Latino voters in the 2013
15 School Board election (70.1%), but was defeated by a non-Latino opponent, *who*
16 *had dropped out of the race prior to the election*, because of low crossover by non-
17 Latinos (35.2%). Alford Supplemental Report, ECF No. 66-2, Exhibit 11, at 2.

18 Even the remaining three City Council elections appear to have been
19 influenced by low crossover voting. In a three-person primary in 2011, Rogelio
20 Montes received 53.5% of Latino votes, but garnered only 13.4% of non-Latino

1 votes. Engstrom Report, ECF No. 66-1, Exhibit 2, at ¶¶ 24-25. Isidro “Sid”
2 Reynaga, who won 67.4% of Latino votes in a three-person primary in 2013,
3 received only 15.3% of the votes cast by non-Latinos. Engstrom Supplemental
4 Report, ECF No. 66-2, Exhibit 10, at ¶ 5. Neither candidate made it out of his
5 respective primary. Enrique Jevons, the lone Latino candidate who did not receive
6 a majority of Latino votes in the contests analyzed (39.2%), received only 11.4%
7 of non-Latino votes in his 2013 primary.⁶ He too was defeated.

8 Finally, it is important to note that the reliability of the crossover data above
9 is not disputed. Unlike some of the confidence intervals associated with the Latino
10 voting preference data, the confidence intervals pertaining to the non-Latino voting
11 patterns are consistently narrow (presumably because the estimates of crossover
12 voting percentage are based upon a much larger sample size). As Dr. Alford
13 testified during his deposition, the only dispute relative to the crossover data is
14 how it should be interpreted—*i.e.*, whether the undisputed percentages of crossover
15 votes are indicative of majority bloc voting. Alford Dep., ECF No. 66-1, Exhibit
16 3, at Tr. 145-47. Contrary to Defendants’ assertions, the fact that Dr. Alford and

17
18 ⁶ The candidate favored by Latino voters in this race, Carol Folsom-Hill (49.7%),
19 also received poor crossover support from non-Latinos (34.2%). Engstrom
20 Supplemental Report, ECF No. 66-2, Exhibit 10, at ¶ 6.

1 Dr. Engstrom have reached differing conclusions on that issue of law does not
2 preclude summary judgment.

3 Against this great weight of undisputed evidence, Defendants argue that
4 Plaintiffs cannot satisfy the majority bloc voting precondition because “low voter
5 turnout among Latinos,” rather than low crossover voting among non-Latinos, was
6 the true cause of the Latino candidates’ defeats. ECF No. 77 at 20. Defendants
7 concede that the Ninth Circuit’s decisions in *Gomez* and *Blaine County* foreclose
8 low voter turnout arguments in the context of the political cohesiveness inquiry
9 (*Gingles* 2), but argue that low voter turnout can still be relevant when analyzing
10 whether the majority votes as a bloc (*Gingles* 3). ECF No. 77 at 20, n.10.

11 This argument is unavailing because the second and third *Gingles* inquiries
12 are two sides of the same coin; both must be examined in tandem to determine
13 whether the minority group’s votes have been unlawfully diluted. As the Supreme
14 Court explained in *Grove*, “the ‘minority political cohesion’ and ‘majority bloc
15 voting’ showings [work together] to establish that the challenged districting
16 thwarts a distinctive minority vote by submerging it in a larger [majority] voting
17 population.” 507 U.S. at 40 (citation omitted). Accordingly, the Ninth Circuit’s
18 prohibition on weighing the impact of low voter turnout applies equally to both
19 inquiries, as allowing low voter turnout to be considered at the third step would

1 produce the same untenable result as allowing it to be considered at the second.
2 *Gomez*, 863 F.2d at 1416 & n.4; *Blaine Cnty.*, 363 F.3d at 911.

3 In the final analysis, there is only one rational conclusion to be drawn from
4 the undisputed evidence recounted above: that the non-Latino majority in Yakima
5 routinely suffocates the voting preferences of the Latino minority. In reaching this
6 conclusion, the Court does not mean to suggest that non-Latinos are deliberately
7 conspiring to outvote their Latino colleagues, or that the City has engaged in any
8 wrongdoing. To reiterate, intent is not a relevant consideration in a § 2 case; all
9 that matters is that the challenged election system has “the *effect* of denying [the
10 minority] [an] equal opportunity to elect its candidate of choice.” *Voinovich*, 507
11 U.S. at 155 (emphasis in original). Nonetheless, Plaintiffs have made a compelling
12 showing that the non-Latino majority “votes sufficiently as a bloc to enable it . . .
13 usually to defeat the [Latino] minority’s preferred candidate,” *Gingles*, 478 U.S. at
14 51, and no rational finder of fact could conclude otherwise. Plaintiffs are therefore
15 entitled to summary judgment on the third *Gingles* precondition.

16 **IV. The Totality of the Circumstances (as Framed by the Senate Factors)**

17 **Demonstrates that the City’s Electoral Process is not Equally Open to**
18 **Participation by Latino Voters**

19 The *Gingles* framework is merely a screening tool designed “to help courts
20 determine which claims could meet the totality-of-the-circumstances standard for a

1 § 2 violation.” *Bartlett*, 556 U.S. at 21. Consequently, satisfying the three *Gingles*
2 preconditions does not result in a finding of liability. *Id.* To establish liability, the
3 plaintiff must ultimately show that, under the “totality of [the] circumstances,”
4 members of a minority group have less opportunity than the majority to participate
5 in the political process and to elect representatives of their choosing. 42 U.S.C.
6 § 1973(b). Nonetheless, “it will be only the very unusual case in which the
7 plaintiffs can establish the existence of the three *Gingles* factors but still have
8 failed to establish a violation of § 2 under the totality of circumstances.” *Jenkins v.*
9 *Red Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1135 (3d Cir. 1993).

10 In analyzing whether the totality of the circumstances test has been satisfied,
11 courts look to the non-exhaustive “Senate Factors” identified in *Gingles*. These
12 factors include (1) prior history of voting-related discrimination; (2) the degree of
13 racially polarized voting; (3) the presence of voting practices or procedures that
14 tend to subjugate the minority group’s voting preferences, such as unusually large
15 voting districts, majority vote requirements, and preclusion of so-called “single-
16 shot” or “bullet” voting strategies; (4) the exclusion of minority group members
17 from the candidate slating process; (5) the extent to which the minority group bears
18 the effects of past discrimination in areas that tend to hinder its members’ ability to
19 participate effectively in the political process; (6) the use of subtle or overt racial
20 appeals in political campaigns; and (7) the extent to which members of the

1 minority group have succeeded in being elected to public office. *Gingles*, 478 U.S.
2 at 44-45. In an appropriate case, a court may also consider (8) the extent to which
3 elected officials have been responsive to the particularized needs of the minority
4 group; and (9) the policy underlying the challenged voting practice or procedures.
5 *Id.* at 45.

6 The above factors “are neither comprehensive nor exclusive,” and there is
7 “no requirement that any particular number of factors be proved, or that a majority
8 of them point one way or the other.” *Id.* (citation omitted). The touchstone of the
9 inquiry is simply whether, under the totality of the circumstances, the challenged
10 electoral process “is equally open to minority voters.” *Id.* at 79 (citation omitted).
11 This necessarily requires a “searching practical evaluation of the past and present
12 reality” within the jurisdiction. *Id.* Further, a reviewing court must always make
13 an “intensely local appraisal of the *design and impact* of the contested electoral
14 mechanisms.” *Id.* (emphasis added) (citation omitted).

15 Before analyzing the Senate Factors, it will be helpful to revisit the process
16 by which City Council members are elected. As noted above, the City of Yakima
17 Charter provides for elections specific to each of the seven City Council seats.
18 This is known as a “numbered post” system because candidates run for a specific
19 seat (post), and voting is conducted on a seat-by-seat basis. Eligibility to vote in
20 primary elections depends upon whether the vacant seat is residency restricted. If

1 the seat is residency restricted, only voters residing in the district assigned to that
2 seat may cast a vote. If the seat is not residency restricted, by contrast, voting is
3 open to all registered voters. The candidates with the top two vote totals advance
4 to the general election.

5 General elections are a contest between two candidates for each open seat.
6 Unlike in primary elections, eligibility to vote does not depend upon whether the
7 open seat is residency restricted; at the general election stage, all registered voters
8 cast a ballot for each seat. By way of example, if Positions 1, 3 and 7 are up for
9 election, registered voters (regardless of where they live) cast one vote for one of
10 the two candidates running for each of the three positions. Under this system, the
11 candidate who earns a majority of the votes cast in his or her head-to-head race
12 will win the seat. Against this backdrop, the Court will proceed to the totality of
13 the circumstances analysis under the non-exclusive Senate Factors.

14 At the outset, the Court rejects Defendants' protestations that the record is
15 not sufficiently developed to resolve the issue of liability on summary judgment.
16 *See, e.g.*, ECF No. 77 at 22 (asserting that would be "premature" for the Court to
17 weigh the Senate Factors on summary judgment and that granting the motion
18 would "prevent[] Defendants from presenting the full body of evidence in support
19 of their case"). While it is true that the Court must make a "searching practical
20 evaluation" of the political realities and perform an "intensely local appraisal" of

1 the challenged voting system, *Gingles*, 478 U.S. at 79, the fact-specific nature of
2 those inquiries does not relieve Defendants of their obligation to come forward
3 with “specific facts showing that there is a genuine issue for trial,” *Celotex Corp. v.*
4 *Catrett*, 477 U.S. 317, 324 (1986) (quotation omitted). Defendants cannot avoid
5 summary judgment by vaguely asserting that they have additional unspecified
6 evidence to present at trial. The Court expressly finds that the record is sufficiently
7 developed and not materially disputed to warrant a ruling on summary judgment.

8 A. History of Voting-Related Discrimination

9 The first Senate Factor focuses on “the extent of any history of official
10 discrimination in the state or political subdivision that touched the right of the
11 members of the minority group to register, to vote, or otherwise to participate in
12 the democratic process.” *Gingles*, 478 U.S. at 36-37. Plaintiffs have proffered two
13 instances of past discrimination against Latinos which they believe are relevant to
14 the totality of the circumstances analysis. First, they note that the Yakima County
15 Auditor persisted in administering literacy tests to Latino voters for several years
16 after the passage of the Voting Rights Act of 1965, despite having been directed by
17 the Washington Attorney General to discontinue the practice. ECF No. 64 at 33-
18 34. Second, Plaintiffs note that Yakima County was sued by the U.S. Department
19 of Justice in 2004 for failing to provide Spanish-language voting materials and
20

1 voter assistance as required by Section 203 of the Voting Rights Act. ECF No. 64
2 at 34-35.

3 The Court finds the first example only marginally relevant because it arose
4 many years ago in the context of newly-enacted legislation limiting (and later
5 prohibiting) the use of literacy tests by federal and state election authorities. *See*
6 ECF No. 66-2, Exhibit 16; *Oregon v. Mitchell*, 400 U.S. 112 (1970). The second
7 example is more probative. As recently as ten years ago, Yakima County was sued
8 by the federal government for failing to provide Spanish-language voting materials
9 and voter assistance to Spanish-speaking voters. These proceedings terminated in
10 the entry of a consent decree. ECF No. 66-2, Exhibit 18. Although Yakima
11 County did not admit liability, it did agree to take several steps to ensure its future
12 compliance with Section 203, including the implementation of a “Bilingual
13 Election Program” managed by a full-time “Program Coordinator.” ECF No. 66-2,
14 Exhibit 18, at 12-14. The Court finds that this factor weighs slightly in Plaintiffs’
15 favor.

16 B. Extent of Racially Polarized Voting

17 The second Senate Factor is “the extent to which voting in the elections of
18 the state or political subdivision is racially polarized.” *Gingles*, 478 U.S. at 37.
19 The concept of “racially polarized voting” encompasses the second and third
20 *Gingles* preconditions—whether the minority group votes cohesively and whether

1 the majority votes sufficiently as a bloc to usually defeat the minority's preferred
2 candidate. *Gingles*, 478 U.S. at 56; *Ruiz*, 160 F.3d at 543. This factor, along with
3 the seventh factor (extent of minority electoral success) are "the most important
4 Senate factors" when the challenged electoral process allows all voters within the
5 jurisdiction to cast a vote for any candidate running for any open position. *Blaine*
6 *Cnty.*, 363 F.3d at 903 (citing *Gingles*, 478 U.S. at 51 n.15); *see also McMillan v.*
7 *Escambia Cnty.*, 748 F.2d 1037, 1043 (5th Cir. 1984) ("Although no factor is
8 indispensable, the legislative history of the amendment to section 2 indicates that
9 racially polarized voting will ordinarily be the keystone of a dilution case.").

10 For the reasons discussed above in conjunction with the second and third
11 *Gingles* preconditions, there can be no serious dispute that voting in Yakima is
12 racially polarized. In nine out of the ten contests analyzed, the Latino candidate
13 received more than 50% of the votes cast by Latino voters. In the dispositive (*i.e.*,
14 non-primary) elections, support ranged from **63.2%** (Supreme Court Position 8) to
15 **98.2%** (Proposition 1). The two Latino City Council candidates who made it out
16 of their primary elections received a remarkable **92.7%** and **92.8%** of the votes
17 cast by Latinos in the general election.

18 Despite having received such strong support from Latino voters, the Latino
19 candidate was defeated in every single race as a result of bloc voting by the non-
20 Latino majority. In the dispositive elections, support for the Latino candidate (or

1 Latino-preferred issue) among non-Latino voters ranged from **30.5%** (2009 City
2 Council Position 7) to **42.6%** (2009 City Council Position 5).⁷ These low levels of
3 “crossover” support are highly indicative of majority bloc voting in this particular
4 context; they demonstrate that, when presented with a choice between a Latino
5 candidate and a non-Latino candidate, approximately 60% to 70% of non-Latino
6 voters will vote for the non-Latino candidate. As the evidence reflects, this degree
7 of majority bloc voting routinely results in the Latino candidate being defeated—
8 even when he or she has the overwhelming support of Latino voters. This factor
9 weighs strongly in favor of a finding of vote dilution.

10 C. Presence of Suspect Voting Practices or Procedures

11 The third Senate Factor looks to “the extent to which the state or political
12 subdivision has used unusually large election districts, majority vote requirements,
13 anti-single shot provisions, or other voting practices or procedures that may
14 enhance the opportunity for discrimination against the minority group.” *Gingles*,
15 478 U.S. at 37. Plaintiffs contend that four features of the City’s electoral system
16 render the Latino minority’s votes particularly susceptible to dilution: (1) the use

17
18 ⁷ Support of the Latino-preferred candidate in the City Council primaries was even
19 lower, ranging from **13.4%** (2011 City Council Position 2) to **37.3%** (2009 City
20 Council Position 5).

1 of numbered posts; (2) an effective majority vote requirement; (3) the staggering of
2 terms; and (4) the residency restrictions attached to four of the seven positions.
3 ECF No. 64 at 35-38.

4 The Court agrees that two of these features—the numbered post system and
5 the effective majority vote requirement—cause substantial dilution of the Latino
6 minority’s votes.⁸ As many courts have recognized, a numbered post system
7 “enhances [the minority group’s] lack of access because it prevents a cohesive
8 political group from concentrating on a single candidate.” *Rogers v. Lodge*, 458
9 U.S. 613, 627 (1982). The dilutive effect of a numbered post system is best
10 illustrated by way of a comparison to a “pure” at-large system. In a pure at-large
11 system, all candidates compete against each other in a single contest for a set
12 number of open seats. Voters are allowed a number of votes corresponding to the
13 number of open seats (n), but may only cast one vote for any given candidate. At
14 the end of the race, the candidates with the n highest vote totals fill the open seats.

15
16
17 ⁸ The Court finds that staggering of terms does not further enhance minority vote
18 dilution in a numbered post system with an effective majority vote requirement.
19 Further, the Court concludes that the incremental dilutive effect of the residency
20 restrictions attached to Positions 1, 2, 3 and 4 is minimal.

1 Minority voters can increase their voting strength in a pure at-large system
2 by voting cohesively for one specific candidate. If the majority distributes its votes
3 sufficiently across the entire field of candidates, the minority's preferred candidate
4 will have a good chance of finishing among the top vote-getters. In essence, the
5 objective of this strategy is to help the minority candidate beat out enough of his or
6 her competitors to finish "in the money." Minority voters can further maximize
7 their voting strength in a pure at-large system by withholding their remaining votes
8 (the so-called "single-shot" strategy). This reduces the total number of votes cast
9 in the election, thereby increasing the relative weight of the votes amassed by the
10 minority's chosen candidate.

11 In a numbered post system, by contrast, seats are elected separately.
12 Candidates run in separate races and compete only against other candidates who
13 are running for the same seat. Voters may cast only one vote in each seat-specific
14 race. In order to win a seat, a candidate must win his or her race outright (either by
15 a plurality or majority of votes, depending upon the jurisdiction).

16 This system blunts the effectiveness of voting cohesively for one candidate.
17 First, it forces the minority's chosen candidate to compete against fewer candidates
18 than if the election were purely at-large. This results in the majority's votes being
19 distributed among fewer total candidates, which has the effect of making it more
20 difficult for the minority candidate to separate himself or herself from the pack.

1 Second, this system neutralizes the single-shot voting strategy. Because seats are
2 elected separately, declining to cast a vote in the races for the other seats does not
3 increase the relative strength of the vote cast for the minority candidate in his or
4 her seat-specific race. Finally, the minority candidate must win his or her race
5 outright. When the degree of majority bloc voting is high and the number of
6 candidates competing is low, winning the race outright can prove very difficult.

7 The dilutive effect of the City's numbered post system is further intensified
8 by the fact that only two candidates are allowed to compete for each seat in the
9 general election. As noted above, the number of candidates competing in a seat-
10 specific race directly impacts the effectiveness of a cohesive voting strategy; the
11 fewer the number of candidates, the more difficult it becomes for the minority's
12 chosen candidate to win the race outright. The odds are particularly long when the
13 race is between only two candidates, since the minority candidate must effectively
14 win a majority of the total votes.

15 Here, it is undisputed that Latinos account for approximately one-quarter of
16 the City of Yakima's total citizen voting-age population. Under a best-case
17 scenario—which assumes that all eligible Latinos are registered to vote, that they
18 all turn out to vote in the election, and that they all vote for the same candidate—a
19 Latino-preferred candidate would need **at least one-third (33.3%)** of the non-
20

1 Latino majority's votes to win a City Council seat.⁹ The reality, of course, is that
2 not all eligible Latinos are registered to vote, that not all Latinos who are registered
3 actually turn out to vote, and that not all participating Latinos vote the same
4 candidate. As previously discussed, in the two general elections which featured a
5 Latino candidate running against a non-Latino candidate, 92% of Latinos voted for
6 the Latino candidate. Using this level of cohesion as a benchmark, the Latino-
7 preferred candidate would need **at least 36%** of the non-Latino majority's votes to
8 win.¹⁰ If one were to further accept Defendants' assertion that registered Latino
9 voters turn out for elections at a rate of less than 40%, *see* ECF No. 77 at 20, the
10 minimum percentage of non-Latino majority votes required to win an election seat
11
12

13 ⁹ Assume a total of 10,000 voters, 2,500 of whom are Latino and 7,500 of whom
14 are non-Latino. The Latino candidate would receive all 2,500 Latino votes and
15 would need another 2,501 non-Latino votes to reach a simple majority of 5,001
16 votes. This represents 33.3% of the non-Latino votes ($2,501 \div 7,500 = 0.333$).
17

18 ¹⁰ The Latino candidate would receive 2,300 Latino votes ($2,500 \times 0.92 = 2,300$),
19 and would need another 2,701 non-Latino votes to reach a simple majority of 5,001
20 votes. This represents 36% of the non-Latino votes ($2,701 \div 7,500 = 0.360$).

1 jumps to **42%** (based upon a conservative estimate of 70% non-Latino voter
2 turnout).¹¹

3 In performing these calculations, the Court does not mean to suggest that
4 City Council elections can be reduced to a mere numbers game. After all, statistics
5 cannot possibly account for the many human variables that influence a political
6 election—least of all the qualifications and experience of the individual candidates.
7 Instead, the purpose of this exercise is simply to illustrate how Latino voters are
8 inherently disadvantaged by the framework of the current system. The bottom line
9 is that, under the current system, it is *mathematically impossible* for Latino voters
10 to elect a candidate of their choosing to the City Council unless (1) *all* Latino
11 voters vote for the same candidate; and (2) a *minimum* of one-third of the non-
12 Latino majority also votes for that candidate. When considered in conjunction
13 with the degree of racial bloc voting noted above, this is a prime example of an
14
15

16 ¹¹ Accounting for turnout rates, there are 6,250 voters, 1,000 of whom are Latino
17 (40% turnout) and 5,250 of whom are non-Latino (estimated 70% turnout). The
18 Latino candidate would receive 920 Latino votes ($1,000 \times 0.92 = 920$), and would
19 need another 2,206 non-Latino votes to reach a simple majority of 3,126 votes.
20 This represents 42% of the non-Latino votes ($2,206 \div 5,250 = 0.420$).

1 electoral system that is not “equally open to minority voters.” *Gingles*, 478 U.S. at
2 79. This factor weighs very strongly in Plaintiffs’ favor.

3 D. Exclusion of Minorities from Candidate Slating Process

4 The fourth Senate Factor asks “whether the members of the minority group
5 have been denied access” to a candidate slating process. *Gingles*, 478 U.S. at 37.
6 This factor is not applicable because the City of Yakima does not utilize a
7 candidate slating process.

8 E. Lingering Effects of Past Discrimination

9 The fifth Senate Factor is “the extent to which members of the minority
10 group in the state or political subdivision bear the effects of discrimination in such
11 areas as education, employment and health, which hinder their ability to participate
12 effectively in the political process.” *Gingles*, 478 U.S. at 37. Plaintiffs offer the
13 following statistics from the *2010-2012 ACS 3-Year Estimates* as evidence that
14 Latinos continue to bear the effects of discrimination in Yakima: (1) that Latinos
15 are three times more likely to live below the poverty line than white residents; (2)
16 that median family income for Latinos is less than half the median family income
17 for white families; (3) that the rate of home ownership among Latinos is less than
18 half than that among their white counterparts; (4) that 55% of Latinos lack a high
19 school diploma, in comparison to only 12% of the white population; (5) that 57%
20 of Latino adults do not have health insurance, in comparison to only 18% of their

1 white counterparts; (6) that Latinos account for only 15% of City of Yakima
2 employees, despite the fact that Latinos represent 33% of the City's working-age
3 population. ECF No. 64 at 39-40.

4 Defendants do not dispute these statistics. They do, however, disagree with
5 Plaintiffs about (1) the extent to which the socio-economic disparities between
6 Latinos and whites can be attributed to discrimination; and (2) the extent to which
7 these disparities adversely impact Latinos' ability to participate in the political
8 process. ECF No. 77 at 28-30. The Court agrees with Plaintiffs that these data are
9 probative of whether the electoral process is "equally open to participation" by
10 Latinos. 42 U.S.C. § 1973(b). While not conclusive proof, marked disparities in
11 socio-economic status are circumstantial evidence of discrimination. Moreover, it
12 can hardly be disputed that depressed socio-economic conditions have at least
13 *some* detrimental effect on participation in the political process. For purposes of
14 the § 2 totality of the circumstances inquiry, a correlation between the two is
15 sufficient. *See Benavidez*, 638 F. Supp. 2d at 727 ("Where disproportionate
16 educational, employment, income level, and living conditions can be shown[,] and
17 where the level of minority participation in politics is depressed, 'plaintiffs need
18 not prove any further causal nexus between their disparate socio-economic status
19 and the depressed level of political participation.'") (quoting *Teague v. Attala*

1 *Cnty*, 92 F.3d 283, 294 (5th Cir. 1996)). This factor weighs slightly in Plaintiffs'
2 favor.

3 F. Use of Subtle or Overt Racial Appeals in Campaigns

4 The sixth Senate Factor examines “whether political campaigns have been
5 characterized by overt or subtle racial appeals.” *Gingles*, 478 U.S. at 37. Having
6 reviewed the record, the Court is not persuaded that political campaigns in Yakima
7 have been characterized by racial “appeals” to the voting base. While race was
8 admittedly discussed in the media in connection with the 2009 City Council race
9 between Ms. Rodriguez and Mr. Ettl, there is insufficient evidence that either
10 candidate attempted to sway voters with race-based appeals. This factor is neutral.

11 G. Extent of Minority Electoral Success

12 The seventh Senate Factor looks to “the extent to which members of the
13 minority group have been elected to public office in the jurisdiction.” *Gingles*, 478
14 U.S. at 37. Here, it is undisputed that no Latino candidate has ever been elected to
15 the City Council in the 37 years that the current voting system has been in place.
16 Furthermore, the only Latina to have ever been appointed to the City Council, Ms.
17 Rodriguez, was defeated by a non-Latino challenger when she subsequently ran for
18 election. These circumstances weigh “heavily in favor of vote dilution.” *Fayette*
19 *Cnty.*, 950 F. Supp. 2d at 1320 (collecting cases).

1 Defendants contend that the significance of this factor is diminished by the
2 “electoral success of Latinos in neighboring or encompassing local jurisdictions,”
3 as evidenced by (1) the election of Jesse Palacios to the Board of Yakima County
4 Commissioners in 1998 and 2002; and (2) the election of Vickie Ybarra to the
5 Board of Directors of the Yakima School District in 2003. ECF No. 77 at 24. The
6 Court does not find these “exogenous” election results particularly relevant. As
7 Plaintiffs correctly note, this Senate Factor focuses on the extent to which minority
8 candidates have been elected to public office “in the jurisdiction.” *Gingles*, 478
9 U.S. at 37. The jurisdiction at issue here is the City of Yakima. Elections that
10 presumably draw voters from all of Yakima County or the entire Yakima School
11 District (the borders of which Defendants have not identified) do not provide much
12 insight into the ability of Latino voters to elect candidates of their choosing to the
13 City Council. *See Sanchez v. State of Colo.*, 97 F.3d 1303, 1324-25 (10th Cir.
14 1996) (explaining that with regard to the seventh Senate Factor, “exogenous
15 elections—those not involving the particular office at issue—are less probative
16 than elections involving the specific office that is the subject of the litigation”)
17 (quotation and citation omitted).

18 Moreover, even if one were to assume a substantial overlap in voting bases,
19 there is no evidence that these other elections follow the same format as City
20 Council elections. As noted above, *Gingles* directs courts to closely scrutinize the

1 “design and impact of the *contested* electoral mechanisms.” 478 U.S. at 79
2 (emphasis added). The results of elections which do not follow the same format
3 are not particularly relevant to establishing vote dilution within the challenged
4 electoral mechanism.

5 On balance, the above factors weigh firmly in Plaintiffs’ favor. The existing
6 record, undisputed in all material respects, supports only one rational conclusion:
7 that under the totality of the circumstances, City Council elections are not “equally
8 open to participation” by Latino voters. 42 U.S.C. § 1973(b). The numbered post
9 system, with its effective majority vote requirement, places Latino voters at a steep
10 mathematical disadvantage, even when their voting strength is perfectly optimized.
11 This built-in disadvantage “interacts with social and historical conditions to cause
12 an inequality.” *Gingles*, 478 U.S. at 47. Because non-Latino voters consistently
13 vote for non-Latino candidates (at a rate of 60% to 70%), the chances of a Latino-
14 preferred candidate earning enough “crossover” votes to win a City Council seat
15 are very slim. Indeed, no Latino candidate has ever been elected under this system.
16 Having established that the Latino minority’s votes are being unlawfully diluted,
17 Plaintiffs are entitled to summary judgment.

18 **V. Remedy**

19 In their Complaint, Plaintiffs pray for an injunction “[e]njoining Defendants
20 . . . from administering, implementing, or conducting any future elections for the

1 City of Yakima under the current method of electing City Council members,” as
2 well as an order directing “the implementation of an election system for the
3 Yakima City Council that complies with Section 2 of the Voting Rights Act.” ECF
4 No. 1 at 9-10, ¶¶ 2-3. Having successfully established liability, Plaintiffs are
5 entitled to these remedies. The Court respectfully directs the parties to meet and
6 confer and submit the following on or before **October 3, 2014**:

- 7 (1) A joint proposed injunction; and
- 8 (2) A joint proposed remedial districting plan.

9 In the event that the parties are unable to agree on the terms of either item above,
10 they may submit separate proposals. If necessary, the Court will contact the parties
11 to schedule a hearing to resolve any remaining disputed issues.

12 **IT IS HEREBY ORDERED:**

- 13 1. Plaintiffs’ Motion to Exclude Expert Testimony of Stephan Thernstrom
14 (ECF No. 62) is **DENIED**.
- 15 2. The parties’ stipulated motion to expedite (ECF No. 88) is **GRANTED**.
16 Plaintiffs’ Motion to Strike Second Supplemental Expert Report of Peter
17 Morrison (ECF No. 89) is **DENIED**.
- 18 3. Plaintiffs’ Motion for Summary Judgment (ECF No. 64) is **GRANTED**.
- 19 4. Defendants’ Motion for Summary Judgment (ECF No. 67) is **DENIED**.

1 5. The telephonic pretrial conference scheduled for September 11, 2014 at
2 9:00 a.m., as well as the bench trial scheduled to begin on September 22,
3 2014, are hereby **VACATED**. The deadlines for filing pretrial pleadings
4 and the pretrial order are also **VACATED**.

5 6. The parties shall meet and confer and submit a joint proposed injunction
6 and a joint proposed remedial districting plan on or before **October 3,**
7 **2014**.

8 The District Court Executive is hereby directed to enter this Order and
9 provide copies to counsel.

10 **DATED** August 22, 2014.



Thomas O. Rice
THOMAS O. RICE
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROGELIO MONTES, et al.,

Plaintiff,

v.

CITY OF YAKIMA, et al.,

Defendants.

NO: 12-CV-3108-TOR

FINAL INJUNCTION AND
REMEDIAL DISTRICTING PLAN

BEFORE THE COURT are the parties' proposed injunctive orders (ECF Nos. 113 and 117) and amicus curiae's third alternative (ECF No. 126). This matter was submitted for consideration without oral argument. The Court has reviewed the briefing, the record, and files herein, and is fully informed.

BACKGROUND

This is an action to remedy a violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301 (previously codified at 42 U.S.C. § 1973). Plaintiffs filed suit in 2012 alleging that Yakima's existing at-large electoral system diluted Latino

voting strength and deprived Latinos of their right to elect representatives of their choosing for Yakima city council. On August 22, 2014, the Court granted Plaintiffs' Motion for Summary Judgment, concluding that there was no genuine issue of material fact, that the Latino minority's votes were being unlawfully diluted under the at-large voting system, and that Plaintiffs were entitled to judgment as a matter of law. ECF No. 108. The Court directed the parties to meet, confer, and submit a joint proposed injunction and remedial districting plan. However, the parties were unable to reach an agreement on a joint proposal and have submitted competing remedial districting plans. The Court also accepted an amicus curiae brief from FairVote, a non-profit organization that proposes a third alternative plan.¹ ECF No. 126. The Court summarizes the existing electoral system and these proposed plans.

A. Yakima Demographics

According to the 2010 Census, the City of Yakima ("City") had a population of 91,067. ECF No. 90 at ¶ 15. The Latino population was 37,587, or 41.27% of the total population. ECF No. 65 at ¶ 13. The non-Latino white population was

¹ FairVote explains that its mission "is to inform and advocate for fairer political representation through reforms that include election methods other than winner-take-all systems." ECF No. 126 at 2 n.1.

47,523, or 52.18% of the total population. *Id.* Using the *2008–2012 ACS 5-Year Estimates*, Plaintiffs have calculated the Latino citizen voting-age population (CVAP) to be 22.66% of the total CVAP in Yakima and rising. ECF Nos. 65 at ¶ 23; 118-1 at 3, 12-13. Defendants’ expert has calculated the Latino CVAP to be 22.97%. ECF No. 114 at 4-5. Defendants’ expert and Plaintiffs’ expert do not agree on the exact manner by which to calculate the Latino CVAP. *Id.* at 2 n.1. The slight difference between their calculations, however, is not material to the Court’s ultimate resolution of this case.

B. The Existing Electoral System in Yakima

The City currently utilizes an at-large election system to fill the seven seats on the Yakima City Council. Four of these seats, designated Positions 1, 2, 3 and 4, are geographically-defined and have residency restrictions attached. Candidates running for one of these seats must reside in a geographic district corresponding to their seat number. Such districts are generally called “single-member districts.” The remaining three seats, designated Positions 5, 6 and 7, have no residency restrictions. Candidates running for one of these seats may reside anywhere within the City. All seats are allotted a four-year term. Terms for all seven seats are staggered, with elections to fill expiring terms held every two years.

Elections follow a “numbered post” format, meaning that candidates file for a particular seat and compete only against other candidates who are running for the

same seat. In the event that more than two candidates file for a particular seat, the City conducts a primary election to narrow the field to the top two candidates. If the seat is one of the four single-member district seats, only voters who reside in the district corresponding to that seat may vote in the primary. If the seat is an unrestricted at-large seat, all voters residing within the City may cast a vote. The two candidates with the highest vote totals in the primary will then advance to a general election.

The general election is essentially a collection of individual at-large races (three or four, depending upon which terms are expiring in a given election year). The two candidates running for each seat compete head-to-head, with the candidate amassing the most votes winning the seat. All registered voters in the City may cast one vote in each head-to-head race, regardless of whether the seat at issue is residency-restricted. In order to win election under this system, a candidate must garner a simple majority of the votes cast in his or her head-to-head race.

As the Court held, this system unlawfully dilutes the votes of Latinos. ECF No. 108. This system, which essentially converts each of the seven city council seats to a city-wide majority-takes-all election, has the effect of denying Latinos the equal opportunity to participate in the political process and to elect candidates of their choice.

//

C. Defendants' Proposed Plan

Defendants, the City of Yakima, Mayor Micah Cawley, and the other six members of the Yakima City Council, have proposed a remedial electoral system that would include five single-member district positions and two at-large positions. ECF No. 113. Like the existing system, the five single-member district seats would follow a numbered-post format whereby a candidate files for a particular seat. A candidate could only seek election in the district within which he or she resides. If more than two candidates file for any given single-member district seat, the City would hold a primary and the top two candidates would advance to the general election. Unlike the current system, only voters living within the geographic district would be allowed to vote for a particular single-member district candidate in the general election—the same voting restrictions imposed at the primary. The candidate who receives a simple majority in the general election would be elected to the council.

Under Defendants' proposal, the two at-large positions would be filled in a single election by way of "limited voting."² There would be no primary for the at-

² For a discussion of limited voting, *see generally* Richard L. Engstrom, *Cumulative and Limited Voting: Minority Electoral Opportunities and More*, 30 ST. LOUIS U. PUB. L. REV. 97 (2010); Todd Donovan & Heather Smith,

large seats. Instead, each candidate who filed for office would appear on a single ballot at the general election. *Id.* at 3. Each voter in the City would cast a single vote for any of the candidates listed. The two candidates who receive the most votes would be elected to the two at-large positions.³

Under this proposal, all council members would be elected to staggered, four-year terms, and all council members currently serving would be allowed to serve out the remainder of their terms. In 2015, four of the five single-member district seats would stand for election. In 2017, the fifth single-member district seat and the two at-large seats would stand for election. The City would continue to employ a Council-Manager form of city government.

Proportional Representation in Local Elections: A Review, WASH. STATE INST. FOR PUB. POLICY (Dec. 1994).

³ Defendants have abandoned an earlier proposed aspect of their plan to name the candidate who receives the most votes in the at-large election as Mayor and the candidate with the second-most votes as Assistant Mayor. ECF No. 136 at 1.

Under the current proposal, the Mayor would be elected from among the council members at the first council meeting in accordance with the Yakima City Charter. ECF No. 119.

Under Defendants' proposed plan, the City would be geographically divided into five districts of roughly equal population. *Id.* at 5. One of those districts, District 1, would be a majority Latino district, which Defendant's term an "opportunity district." The District 1 seat would stand for election in 2015. The Defendants' plan also includes what they term an "influence district," District 5, which would have a "substantial" Latino CVAP. *Id.* at 9-10. Defendants propose that District 5's council member would not stand for election until 2017.

The relevant demographics of the districts in Defendants' plan are as follows:

District	Total Pop.	Total CVAP	Latino CVAP	Latino share of CVAP
1	18,363	7,305	3,905	53.46%
2	18,579	13,074	1,581	12.09%
3	17,917	12,981	1,377	10.61%
4	18,422	12,583	2,559	20.34%
5	17,786	9,061	3,212	35.45%

ECF No. 114 at 4.

D. FairVote's Proposed Plan

FairVote has submitted a proposal to the Court that is a variation of the Defendants' proposed plan. ECF No. 126. Under FairVote's proposal, Yakima

would be divided into four single-member districts and would elect three at-large seats in a single limited voting election. Like Defendants' plan, FairVote proposes a plan they contend would include one majority Latino geographic district.

Under FairVote's plan, the single vote, limited voting method would be used to elect three council members in an at-large election, with no primary, and the first, second, and third place finishers would all be elected to the city council. FairVote argues that this method "better promotes meaningful participation by all voters, fair representation in a diverse community, and self-correcting flexibility as the composition of electorates change." *Id.* at 5.

FairVote advocates for three at-large council seats, instead of two as Defendants have suggested, because the percentage of votes needed to elect a minority candidate to one of the available seats would decrease, thereby increasing the likelihood of a minority candidate's success. The percentage of votes that a minority candidate must have in order to be guaranteed to win one of the open seats is known as the "threshold of exclusion." Mathematically, the threshold of exclusion is calculated as one divided by the sum of the number of seats available plus one, plus one vote:

$$\text{Threshold of Exclusion} = \frac{1}{(\text{seats} + 1)} + 1 \text{ vote}$$

In an election with two at-large seats available, as Defendants have suggested, the threshold of exclusion is 33.3% plus one vote. FairVote observes that under Defendants' plan, the threshold of exclusion is too high for a Latino-preferred candidate to win either one of the seats. *Id.* at 7. With only 19.9 % of the registered voters, as FairVote estimates, the Latino vote cannot meet the 33.3% plus one vote, threshold of exclusion needed in order to win an at-large seat on the council. *Id.* at 11.

In an election with three at-large seats available, as FairVote advocates, the threshold of exclusion drops to 25% plus one vote. *Id.* FairVote contends that Defendants' plan should be modified to include three at-large, non-staggered seats so that "a Latino-preferred candidate could be reliably elected to at least one of those three at-large seats." *Id.* at 12. FairVote suggests that if voters unequally split their votes between the majority-preferred candidates and there are cross-over votes (non-Latino voters casting their votes for Latino-preferred candidates), a minority preferred candidate can be elected. *See id.* at 8, 11–12.

FairVote did not provide a proposed district map for the four single-member districts it proposes. In their reply briefing, Defendants have provided the Court with a proposed four-district map in order to implement FairVote's plan. ECF No. 138-2. That map includes one district with a significant Latino CVAP population (49.26%), but not a majority. *Id.*

E. Plaintiffs' Proposed Plan

Plaintiffs have proposed the plan they introduced in their Motion for Summary Judgment. ECF No. 117. Plaintiffs' plan would follow a numbered post format. The plan would create seven single-member districts and no at-large seats. Like Defendants' proposed single-member districts, a candidate could only seek election in the district within which he or she resides. If more than two candidates file for any given single-member district seat, the City would hold a primary and the top two candidates would advance to the general election. Also like Defendants' plan, and unlike the current system, only voters living within the geographic district would be allowed to vote for a particular single-member district candidate in the general election. The candidate who receives a simple majority in the general election would be elected to the council.

Under Plaintiffs' plan, council members would have four-year, staggered terms. However, unlike Defendants' plan, Plaintiffs have proposed that all seven seats stand for election in 2015. The staggered system would be preserved by having even-numbered seats stand for election again in 2017 for full four-year terms; odd-numbered seats would stand for election again in 2019. The relevant demographics of Plaintiffs' proposed plan are as follows:

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District	Total Pop.	Total CVAP	Latino CVAP	Latino share of CVAP
1	12,533	4,998	2,625	52.52%
2	13,358	5,527	2,506	45.34%
3	12,859	8,653	2,181	25.21%
4	13,175	7,676	2,075	27.03%
5	12,683	8,702	1,071	12.31%
6	13,176	9,625	685	7.12%
7	13,283	9,823	1,491	15.81%

ECF No. 114 at 5.⁴

⁴ These numbers are taken from Defendants' calculations of the demographics of Plaintiffs' proposed districts. Plaintiffs' calculations indicate the districts contain CVAP percentages of 54.51% (Dist. 1), 46.31% (Dist. 2), 24.80% (Dist. 3), 26.69% (Dist. 4), 12.21% (Dist. 5), 7.11% (Dist. 6), and 15.14% (Dist. 7). ECF No. 118-1 at 3. The Court uses Defendants' numbers in evaluating all the proposed plans to provide numerical consistency. The slight difference between the parties' calculations is not material to the Court's resolution of this case.

DISCUSSION

I. Whether the Court owes deference to Defendants' proposed plan

The Supreme Court has often “recognized that ‘reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so.’” *White v. Weiser*, 412 U.S. 783, 794–95 (1973) (quoting *Reynolds v. Sims*, 377 U.S. 533, 586 (1964)); accord *Garza v. Cnty. of L.A.*, 918 F.2d 763, 776 (9th Cir. 1990). “[I]n choosing among plans, a district court should not pre-empt the legislative task nor ‘intrude upon state policy any more than necessary.’” *Weiser*, 412 U.S. at 795 (quoting *Whitcomb v. Chavis*, 403 U.S. 124, 160 (1971)). Thus, when choosing between two possible plans, “[t]he only limits on judicial deference to state apportionment policy . . . [are] the substantive constitutional and statutory standards to which such state plans are subject.” *Upham v. Seamon*, 456 U.S. 37, 42 (1982) (per curiam) (discussing *Weiser*). A district court must therefore defer to a lawful legislative plan that fully remedies a violation of Section 2 of the Voting Rights Act. On the other hand, any legislative plan which would fail to survive a challenge under the standards applicable to Section 2 does not remedy the violation and deserves no such deference. *Id.* at 40–41 (affirming that “a court must defer to the legislative judgments the plans reflect”

absent “any finding of a constitutional or statutory violation with respect to those districts”).

Therefore, the Court must first evaluate Defendants’ plan to determine (1) whether it is a lawful legislative plan, and (2) whether it fully remedies the Section 2 violation—that is, whether Defendants’ proposed plan would survive a Section 2 challenge in its own right. If the Court concludes that the plan is both a lawful legislative act and that it remedies the violation, the Court must accept the plan. However, if the Court concludes either that Defendants’ proposed plan is not a lawful legislative act or that it does not fully remedy the violation, the Court may not afford the plan any deference. *See id.* at 39 (“Although a court must defer to legislative judgments on reapportionment as much as possible, it is forbidden to do so when the legislative plan would not meet the special standards of population equality and racial fairness that are applicable to court-ordered plans.”); *Garza*, 918 F.2d at 776 (concluding that the district court was not required to defer to a plan because “the proposal was not an act of legislation; rather, it was a suggestion by some members of the Board”).

A. Conflict with Washington State law

Plaintiffs contend that Defendants’ plan deserves no deference because the proposed limited voting election scheme is unlawful under Washington State law. Defendants’ counter that Washington State law does not “expressly forbid” their

proposed plan, and “in any event, a state statute may ‘give way’ to remedy a Section 2 violation.” ECF No. 136 at 2.

District courts are not required to defer to a plan that is not a lawful act of legislation. *See Wise v. Lipscomb*, 437 U.S. 535, 545 (1978) (White, J.); *Garza*, 918 F.2d at 776. Where a proposed plan runs contrary to controlling state law, that “plan [is] not the equivalent of a legislative Act of reapportionment performed in accordance with the political processes of the community in question.” *Wise*, 437 U.S. at 545.

The Supreme Court was split over this issue in *Wise*. Justice White wrote an opinion stating that a district court need not defer to the plan proposed by the city of Dallas because Dallas did not have authority under state law to reapportion itself. *Id.* at 544–45 (discussing *E. Carroll Parish Sch. Bd. v. Marshall*, 424 U.S. 636 (1976)). Justice Powell wrote a concurring opinion stating that district courts must defer to “local legislative judgments . . . even if . . . [the Court’s] examination of state law suggests that the local body lacks authority to reapportion itself.” *Id.* at 547.

The Court finds persuasive the Tenth Circuit’s evaluation of these competing contentions in *Large v. Fremont County*, 670 F.3d 1133 (10th Cir. 2012). Specifically, “federal courts owe their deference first and foremost to legislators of sovereign States, and only through them to local governmental

entities.” *Id.* at 1142. As such, the Court owes its deference to the policy choices made by Washington State in defining electoral systems allowable at the local level. If the plan proposed by Defendants conflicts with the policy choices of the Washington State legislature, it is owed no deference.⁵

Defendants are correct that state law must sometimes yield to afford an effective remedy under the Voting Rights Act. The Supremacy Clause requires that state law be abrogated where doing so is necessary to remedy a violation of the

⁵ Moreover, Justice Powell’s concurring opinion noted a difference between lawful procedure and lawful effect, stating that where “the specific plans proposed . . . would have unlawful effect” legislative judgment is tainted and “the normal presumption of legitimacy afforded the balances in legislative plans . . . could not be indulged.” 437 U.S. at 549. As such, Justice Powell was asserting that legislation with lawful effect must be afforded deference regardless of the propriety of the process of implementation because of the inherent power of elected bodies to legislate when the need arises. However, where the result of legislation has an unlawful effect, no deference is due. The case *sub judice* falls within the latter category. Defendants’ plan is owed no deference under either standard articulated in *Wise* because, as the Court explains *infra*, it has an unlawful effect.

Voting Rights Act. *See Arizona v. Inter Tribal Council of Ariz. Inc.*, 133 S.Ct. 2247, 2256 (2013) (“[Federal legislation] so far as it extends and conflicts with the regulations of the State, necessarily supersedes them.” (quoting *Ex part Siebold*, 100 U.S. 371, 384 (1879))); *Large*, 670 F.3d at 1145 (“In remedial situations under Section 2 where state laws are *necessarily* abrogated, the Supremacy Clause appropriately works to suspend those laws because they are an *unavoidable obstacle* to the vindication of the federal right.” (emphasis in original)). However, where it is not necessary to abrogate state law, *see Weiser*, 412 U.S. at 795, the Court must respect the legislation of the State of Washington.

Plaintiffs point to two statutory provisions which call into question the validity of the limited voting scheme Defendants propose. ECF No. 127 at 4–5, 6–7. First, RCW 35.18.020(2) provides that “councilmembers may be elected on a citywide or townwide basis, or from wards or districts, or any combination of these alternatives. Candidates shall run for specific positions.” Plaintiffs contend this last sentence is incompatible with a limited voting electoral format where candidates run in a general election for any of two or three at-large positions. ECF No. 127 at 4–5. In opposition, Defendants contend that (1) this is a tortured reading of the statute, (2) the at-large positions will be specific, numbered seats, and (3) “candidates will obviously intend to run for a particular seat on the City

Council, regardless of whether the candidates know in advance which of the two [or three] seats they will ultimately win.” ECF No. 136 at 1–2.

Second, RCW 29A.52.210 provides that city, town, and district primaries shall be nonpartisan and shall be held on the first Tuesday in August (pursuant to RCW 29A.04.311). It also provides that “[t]he purpose of this section is to establish the holding of a primary . . . as a uniform procedural requirement to the holding of city, town, and district elections. These provisions supersede any and all other statutes, whether general or special in nature, having different election requirements.” RCW 29A.52.210. Plaintiffs argue this section of state law is incompatible with Defendants’ proposed limited voting primary because there would be no primary elections in the proposed plan; everyone who filed for office would appear on the final ballot at the general election. ECF No. 127 at 6–7.

Plaintiffs contend a combined reading of these two statutes allows for “only three types of city council elections in a city-manager system such as that used in Yakima: at-large elections in which candidates run for specific seats, district-based elections in which candidates run for specific seats, or a mixture of the two;” and each would require a primary to narrow the field down to two candidates. *Id.* at 7.

The cited statutes cast grave doubt upon the legality of Defendants’ proposed plan. The Court is especially concerned with the lack of a primary in

face of the clear dictate of the Washington State legislature that primaries be “a uniform procedural requirement to the holding of city, town, and district elections.” RCW 29A.52.210. Defendants have not offered a reading of this statute that is compatible with their proposed plan. Instead, they rely on the absence of any express prohibition to “limited voting” in the relevant statutes as evidence that such a system is not disallowed under Washington State law. Further, Defendants rely on cases from other states which have allowed limited voting but ignore that those states did not have laws similar to Washington’s. While Washington State law is silent about limited voting, it is not silent on requiring primaries. Defendants have not reconciled this clear requirement with their proposed plan.

The Court also takes notice of a report by the Washington State Institute for Public Policy issued in 1994 upon the request of “[s]everal members of Washington’s House of Representatives . . . to summarize the research on the role single member districts and other electoral arrangements may play in local government in increasing both voter turnout and representation of minority groups.” Todd Donovan & Heather Smith, *Proportional Representation in Local Elections: A Review*, WASH. STATE INST. FOR PUB. POLICY (Dec. 1994), available at <http://www.wsipp.wa.gov/ReportFile/1181>. This report discussed limited and cumulative voting systems and suggested their use may facilitate minority

representation. Irrespective of the virtues that limited voting could bring to cities like Yakima, however, the Washington State legislature has not yet implemented any form of limited or cumulative voting.

“[A]ny remedy for a Voting Rights Act violation must come from within ‘the confines of the state’s system of government.’” *Dillard v. Baldwin Cnty. Comm’rs*, 376 F.3d 1260, 1268 (11th Cir. 2004) (quoting *Nipper v. Smith*, 39 F.3d 1494, 1533 (11th Cir. 1994) (en banc)). Where a proposed system finds no legal footing, nor occupies “a traditional and accepted place” in the states’ election law landscape, a federal court does not have the authority to “impose it on a state government, regardless of the theoretical prospect of increasing minority voting strength.” *Id.*; accord *Large*, 670 F.3d at 1148 (“[W]here a local governmental body’s proposed remedial plan for an adjudged Section 2 violation *unnecessarily* conflicts with state law, it is not a legislative plan entitled to deference by the federal courts.” (emphasis in original)). The Court will not impose an electoral scheme that unnecessarily conflicts with state law, especially when Defendants’ proposed plan also does not provide a presently effective remedy to the Section 2 violation.

B. Full and Effective Remedy

Under Defendants’ proposed electoral system, Yakima would have five geographic districts and two at-large positions. The Court concludes that

Defendants' proposal would not fully remedy the Section 2 violation.

i. At-Large Positions

First, the at-large system, as proposed by the Defendants, does not afford a Latino-preferred candidate a chance to obtain one of the two seats available. As FairVote succinctly pointed out, with only 19.9 % of the registered voters as FairVote estimates, or 22.97% CVAP as Defendants estimate, the Latino vote cannot meet the 33.3% plus one vote threshold of exclusion needed in order to win one of the at-large council seats. ECF No. 126 at 11. Defendants' proposed at-large plan is flawed in the same manner as the current electoral system because it dilutes the Latino vote against the majority population.

Defendants tout their proposed plan as superior because they estimate the city-wide Latino CVAP will be 30.9% by 2021, giving Latinos a more powerful position in such a city-wide, at-large election. ECF Nos. 129 at 12; 131 at ¶ 7. This is not the correct measure for evaluating a Section 2 violation. Under the totality of the circumstances, "the proper inquiry is whether changing demographics demonstrate that Hispanics presently have the ability to elect [candidates of their choice], not whether they will have this ability in the future." *Ruiz v. City of Santa Maria*, 160 F.3d 543, 555 (9th Cir. 1998) (per curiam). The demographics of Yakima are changing, and time will tell if further balancing of the electoral map will be required after the 2020 census. However, future

demographics are irrelevant to the Court's present inquiry. The only relevant fact is that Defendants' proposed two-seat at-large plan does not afford the Yakima Latino population a *present* ability to participate in the political process.

ii. Single Member Districts

Second, Defendants' proposal for five geographic districts does not itself remedy the Section 2 violation. The percentage of Latino CVAP in District 1 would be 53.46%, giving Latinos a majority district where they have a chance to elect a representative of their choice. Defendants calculate the percentage of Latino CVAP in District 5 would be 35.45%, which Defendants contend makes that District an "influence district" where Latinos would constitute a "substantial" percentage of the CVAP. ECF No. 113 at 4, 10. But 35.45% is hardly enough of an influence to provide an equal opportunity to elect a Latino-preferred candidate, especially where, as the Court has found, the non-Latino majority has historically voted as a bloc against Latino candidates. ECF No. 108 at 43–48.

Defendants contend that because District 1 in their proposed plan contains a higher percentage of Latinos than District 1 in Plaintiffs' proposed plan, their plan provides a better opportunity for Latinos to elect candidates of their choice. However, the packing (concentration) of a minority population into one district can minimize the influence that minorities will have in neighboring districts. *See Voinovich v. Quilter*, 507 U.S. 146, 154 (1993) ("[W]e have recognized that

‘[d]ilution of racial minority group voting strength may be caused ‘either’ by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority.’ (quoting *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986)). Under Defendants’ plan, the Latino population in District 1 would be 53.46% of the CVAP. In the other districts, the Latino CVAP would be 12.09%, 10.61%, 20.34%, and 35.54%. None of these other districts would presently give the Latino population an equal opportunity to elect a Latino-preferred candidate or to truly influence the results of any district elections.

Like their attempts to strengthen the city-wide portion of their proposal, Defendants also assert that by 2020, Latinos will constitute 45.5% of the population in District 5. Again, the proper measure is the demographics as they affect Latino’s opportunity to elect candidates now, not what changing demographics may yield in the future. *Ruiz*, 160 F.3d at 555. As such, in the system proposed by Defendants, Latinos would only have the present ability to elect a candidate in one of the five geographic districts.

iii. Rough Proportionality

Defendant’s proposed system would also not afford Latinos a fair opportunity to obtain a number of seats roughly proportional to their population. An acceptable remedy need not maximize the electoral opportunities of a minority

group, *Johnson v. De Grandy*, 512 U.S. 997, 1017 (1994), nor does a minority population have a right to proportional representation, 52 U.S.C. § 10301(b).

However, the Supreme Court has identified rough proportionality as a relevant fact, in the totality of circumstances, when determining “whether members of a minority group have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.”

Johnson, 512 U.S. at 1000 (internal quotation marks and citation omitted). In fact, this Court would fail in its duty were it not “to ask whether the totality of facts, including those pointing to proportionality, showed that the new scheme would deny minority voters equal political opportunity.” *Id.* 1013–14 (footnote omitted).

An electoral scheme does not violate Section 2 “where, in spite of continuing discrimination and racial bloc voting, minority voters form effective voting majorities in a number of districts roughly proportional to the minority voters’ respective shares in the voting-age population.” *Id.* at 1000. Defendants assert that the Latino CVAP in Yakima is 22.97%. With seven city council positions, Latinos should, mathematically, hold 1.6 seats to be proportional to their share of the CVAP. As such, the Court finds that, in the totality of the circumstances, a factor to consider is whether a proposed plan provides equal electoral opportunity for the Latino population to attain one of the seven city council seats along with a genuine possibility to obtain a second seat.

As the Court has explained, Defendants' proposal only gives the Latino population an opportunity to attain one of the seven seats. Latinos are excluded from an equal opportunity in the two city-wide, at-large seats. These two seats effectively preserve the status quo that the Court has concluded violates Section 2 as it continues to allow non-Latino candidates to dominate those elections on a city-wide majority-takes-all basis. While Latinos would achieve a single majority geographic district, they would be excluded from having a present ability to influence any other district seat. There is no genuine possibility that Latino voters could elect a second candidate of their choosing.

Rough proportionality is a significant indicator of whether an electoral plan provides an adequate remedy to a Section 2 violation, and Defendants' plan does not provide a present opportunity for Latinos to obtain roughly proportional representation. Significantly, Defendants do not contend that their plan provides proportionality. Instead, Defendants state that "to the extent this Court is concerned with adopting a plan that contains a number of immediate election opportunities commensurate with the population of eligible Latino voters in the City, FairVote's proposal provides immediate proportionality" ECF No. 129 at 22. Thus, Defendants assert, the Court should adopt FairVote's plan because it "immediately offers two positions in which Latinos have a meaningful opportunity to elect their candidate of choice." *Id.*; *see also* ECF No. 136 at 7 ("If this Court is

concerned with providing immediate proportionality, then this Court should adopt the proposal set forth in FairVote's *amicus curiae* brief and the map attached to this reply [ECF No. 138-2].")

iv. FairVote's Alternative

FairVote's plan, while providing Latinos a slightly better chance at equal representation in the at-large seats, suffers even more problems than Defendants' plan. First, its use of limited voting is prohibited by the same legal impediment as Defendants' plan. Second, while FairVote would employ three city-wide at-large seats, dropping the threshold of exclusion to 25%, that number is still too high for a Latino-preferred candidate to win any one of the seats. With only 19.9% of the registered voters, as FairVote estimates, the Latino vote cannot meet the 25% plus one vote threshold of exclusion needed in order to win a seat on the council.⁶

Third, FairVote's proposal of four single-member districts only includes one district that contains a significant Latino CVAP population (49.26%). This is not a majority and, while it may be significantly influential, it does not presently assure Latinos an equal opportunity to elect a candidate of their choice. *See Bartlett v. Strickland*, 556 U.S. 1, 13 (2009) ("Placing [minority] voters in a district in which

⁶ The same holds true even if the Court applies the 22.97% Latino CVAP Defendants have calculated.

they constitute a sizeable and therefore ‘safe’ majority ensures that [minorities] are able to elect their candidate of choice.” (quoting *Voinovich*, 507 U.S. at 154)).

Under FairVote’s proposal, in total, Latinos would not presently have an equal opportunity to elect even a single candidate of their choice. In the particular circumstances of this case, the use of a hybrid at-large and single-member district electoral system yields the same fractured and unequal access to political office that is present in the current electoral system. This Court concludes that neither Defendants’ nor FairVote’s proposals offer a legally acceptable remedy under the circumstances of this case.

II. The Court Must Impose a Legally Acceptable Plan

In the absence of a valid legislative plan, the duty falls on the district court to impose a constitutionally acceptable plan that will remedy the Section 2 violation. *Chapman v. Meier*, 420 U.S. 1, 27 (1975). In choosing among possible remedial plans, a court must implement a plan that most closely approximates any proposed legislative plan, while still satisfying constitutional requirements and preventing a renewed Section 2 violation. *See Weiser*, 412 U.S. at 795–97. When a district court is required to fashion a remedy, the Supreme Court has directed the use of single-member districts unless there are compelling reasons not to use them. *See Chapman*, 420 U.S. at 18–19 (reaffirming “an emphasis upon single-member

districts in court-ordered plans” absent “insurmountable difficulties” or “particularly pressing features calling for [another type of electoral system]”).

Plaintiffs’ proposed plan would create seven single-member districts. One of those districts, District 1, would have a majority-Latino CVAP (52.52%). District 2 in Plaintiffs’ plan also has a substantial Latino population, in which Latinos constitute 45.34% of the CVAP. Latinos would constitute a quarter or more of the CVAP in two other districts (3 and 4). Plaintiffs’ proposed plan affords Latinos the present ability to elect a Latino-preferred candidate in District 1 and a genuine possibility to elect a Latino-preferred candidate in District 2. This provides rough proportionality, as was discussed *supra*. Plaintiffs’ proposal also avoids concentrating the Latino population into a single geographic district which would minimize the ability of Latinos to influence districts in which they are not the majority. Plaintiffs’ proposal is lawful and meets the objectives of remedying the Section 2 violation. The boundaries of the single-member districts reflected in Plaintiffs’ Illustrative Plan 1 are reasonably compact and are not in derogation of traditional redistricting principles. The total population deviation among districts is 6.33%, and therefore the proposed districts comply with the one person, one vote requirement of federal law. *See Brown v. Thomson*, 462 U.S. 835, 842–43 (1983) (concluding that an apportionment plan with a maximum population deviation under 10% is only a minor deviation from mathematical equality among voting

districts and is a prima facie indication that the districts are acceptable); *Reynolds*, 377 U.S. at 579 (“[T]he overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen.”).

Defendants contend the creation of majority-minority districts “sacrifices the voting opportunities of most Latinos at the expense of Latinos who are fortunate enough to reside in Plaintiffs’ Districts 1 and 2.” ECF No. 136 at 7. The Court previously rejected this argument when it found a Section 2 violation in this case. ECF No. 108 at 29–31. “Districting plans with some members of the minority group outside the minority-controlled districts are valid,” and “[t]he fact that the proposed remedy does not benefit all of the Hispanics in the City does not justify denying any remedy at all.” *Gomez v. City of Watsonville*, 863 F.2d 1407, 1414 (9th Cir. 1988).⁷ In light of the fact that the alternative proposed remedies

⁷ Defendants contend that *Gomez* is inapplicable in evaluating remedies because it only applies to satisfying the first *Gingles* factor. ECF No. 129 at 17 n.10; *see also* ECF No. 108 (Court’s Order applying the three Section 2 preconditions articulated in *Thornburg v. Gingles*, 478 U.S. 30 (1986), to the facts of this case). Defendants argue further that *Gomez* “does not detract from Defendants’ position that their plan is superior because [their proposed plan] extends an avenue of empowerment to all eligible Latino voters in the City.” *Id.* As the Court has explained,

perpetuate the Section 2 violation, the Court concludes that the use of single-member districts is a valid remedy, even though some Latinos may live outside the majority-Latino districts, because it affords the Latino population an effective remedy, imperfect as it may be.

Defendants also object to Plaintiffs' proposed plan because they assert it amounts to gerrymandering. ECF No. 129 at 23. Defendants allege that the districts are drawn with race as the predominant factor and that the plan is not the least restrictive means by which to remedy the Section 2 violation. The Court previously rejected this argument as well. ECF No. 108 at 31–33. To the extent that race plays a role in the districting of Yakima, it does so both in Defendants' proposed plan and in Plaintiffs' proposed plan. Such consideration is only natural

Defendants' plan does not afford a viable opportunity for Latinos to elect a councilmember in the at-large elections, and therefore it does not empower all Latinos in Yakima to elect a representative of their choice. Further, while *Gomez* specifically involved determining whether there was a Section 2 violation, the cited discussion came in the context of determining whether a valid remedial district could be formed (*Gingle's* first factor). 863 F.2d at 1413–14. The Court finds the Ninth Circuit's reasoning in evaluating the validity of the proposed districts in *Gomez* persuasive in evaluating the validity of the proposed remedies in this case.

in remedying a historic denial of voting rights, but ensuring compliance with Section 2 is a compelling state interest. *See Bush v. Vera*, 517 U.S. 952, 977–78 (1996). It does not follow that Defendants’ proposed remedy is “narrower” than Plaintiffs’ proposed remedy. Districting that factors in race must not do so “more than is ‘reasonably necessary’ to avoid § 2 liability.” *Id.* at 979. Plaintiffs’ proposed plan—which factors in traditional districting concepts, such as compactness and equal population—does not factor in race more than is necessary.

Finally, Defendants object to the Plaintiffs’ proposed plan because it would require all the city council seats to stand for election in 2015. Defendants assert that several factors compel the Court to avoid “invalidating” the elections of councilmembers who would not otherwise be up for election in 2015. ECF No. 136 at 11. Assuming that the Court is “invalidating” the elections of the

councilmembers,⁸ the Court may do so where an unequal election system has substantially infringed upon a protected group's ability to affect the outcome of an election. *See, e.g., Toney v. White*, 488 F.2d 310, 315 (5th Cir. 1973) (en banc). In determining how and when remedial measures should be implemented, the Court must "consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles." *Reynolds*, 377 U.S. at 585.

In this case, the constitutional infraction is one that goes to the core of the rights of citizens: the ability to equally participate in the political process. Latinos have been denied the equal opportunity to elect representatives of their choice in Yakima. This is balanced against the minor disruptive effect of requiring all city council positions to stand for election in 2015. Plaintiffs' remedial plan would not

⁸ The Court is not "invalidating" the elections because it is not requiring all candidates elected under the current system to immediately vacate their posts. All councilmembers will maintain their positions until completion of the normal election cycle this year. The fact that three councilmembers will have to stand for early election this year is not as much an invalidation of their appointment, but a matter of effectively and efficiently introducing an electoral system compliant with Section 2 of the Voting Rights Act of 1965.

call for immediate elections but would hold elections as normally scheduled for 2015. *Cf. Toney*, 488 F.3d at 316. Four councilmembers' positions are set to expire naturally in 2015 anyway. Thus, immediate implementation will cut three councilmembers' positions short by two years (effective January 1, 2016). Those council members may attempt to regain their seats under the new, constitutionally-valid electoral system.

Further, the remedial electoral system herein ordered takes into account the mechanics and complexities of Washington State's election laws. Unlike the proposed at-large, limited voting system, the use of single-member districts is well-accepted as a valid electoral system in Washington, as is the procedure of modifying staggered councilmember positions at the next scheduled general election cycle. *See* RCW 35.18.020(2)–(4) (affording for initial staggering of terms and, upon changes in the number of council seats, for staggering at the next general election cycle).

Finally, this year's election cycle is not imminent.⁹ *Cf. Reynolds*, 377 U.S. at 585. The City and its residents will have ample time to implement the remedial electoral system herein ordered. The only issue created in 2015 is a broader

⁹ The primary election will occur in August, nearly six months after the issuance of this Order. RCW 29A.04.311.

electoral field during the initial implementation phase. Given the long-standing Section 2 violation, a broad electoral field only serves to assure that each citizen of voting age has the appropriate opportunity, under the new electoral scheme, to have his or her voice heard now. This compelling remedial goal outweighs any slight inconvenience to those three candidates that will be displaced after having been elected under a flawed system.¹⁰

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¹⁰ In support of their argument, Defendants cite *Soules v. Kauaians for Nukolii Campaign Committee*, 849 F.2d 1176 (9th Cir. 1988). *Soules* was not an equal-protection or Voting Rights Act case. However, even under *Soules*, a court may invalidate an election after taking into account “equitable considerations in fashioning the appropriate remedy,” and upon a proper balancing of the “severity of the alleged constitutional infraction” against the “countervailing equitable factors such as the extremely disruptive effect of election invalidation and the havoc it wreaks upon local political continuity.” *Id.*; see also *Montana Chamber of Commerce v. Argenbright*, 226 F.3d 1049 (9th Cir. 2000). As the Court’s discussion indicates, the equitable factors in this case support implementing the new electoral system in its entirety during the next electoral cycle.

ACCORDINGLY, IT IS ORDERED:

1. Plaintiffs' Motion for Entry of Proposed Remedial Plan and Final Injunction (ECF No. 117) is **GRANTED**. Defendants' Proposed Remedial Redistricting Plan(s) and Injunction (ECF No. 113, 129, 136) are **DENIED**.

2. The City of Yakima is permanently enjoined from administering, implementing, or conducting any future elections for the Yakima City Council in which members of the City Council are elected on an at-large basis, whether in a primary, general, or special election.

3. Beginning with the elections for the Yakima City Council to be held in 2015, and including the August 4, 2015 primary election and the November 3, 2015 general election, all elections for the Yakima City Council will be conducted using a system in which each of the seven members of the City Council is elected from a single-member district. Each councilmember must reside in his or her district, and only residents of a given district may vote for the councilmember position for that district.

4. The Court hereby adopts, as a remedy for the Section 2 violation, Plaintiffs' proposed Illustrative Plan 1. Maps and tables showing the boundaries of the new seven single-member districts and their populations are attached as Exhibit A.

5. Defendants shall take all steps necessary to implement the seven

single-member district plan attached as Exhibit A in order to allow single-member district based elections to proceed in 2015 and thereafter, provided that the City of Yakima may revise those districts based on annexations, de-annexations, and population changes reflected in the decennial census and at appropriate times in the future when necessary to conform to state and federal law.

6. In order to preserve the current staggered election plan for members of the City Council, the odd numbered districts will be set for a four-year election cycle and the even numbered districts will be set initially for a two-year term and thereafter for a four-year election cycle.

7. This judgment is binding upon all parties and their successors. Future redistricting shall be done in a manner that complies with the terms and intent of this Judgment and the Court's August 22, 2014 Order, continues to provide for single-member districts, and complies with Section 2 of the Voting Rights Act.

8. Any requests by Plaintiffs for costs and fees shall be determined by the Court in accordance with Fed. R. Civ. P. 54(d).

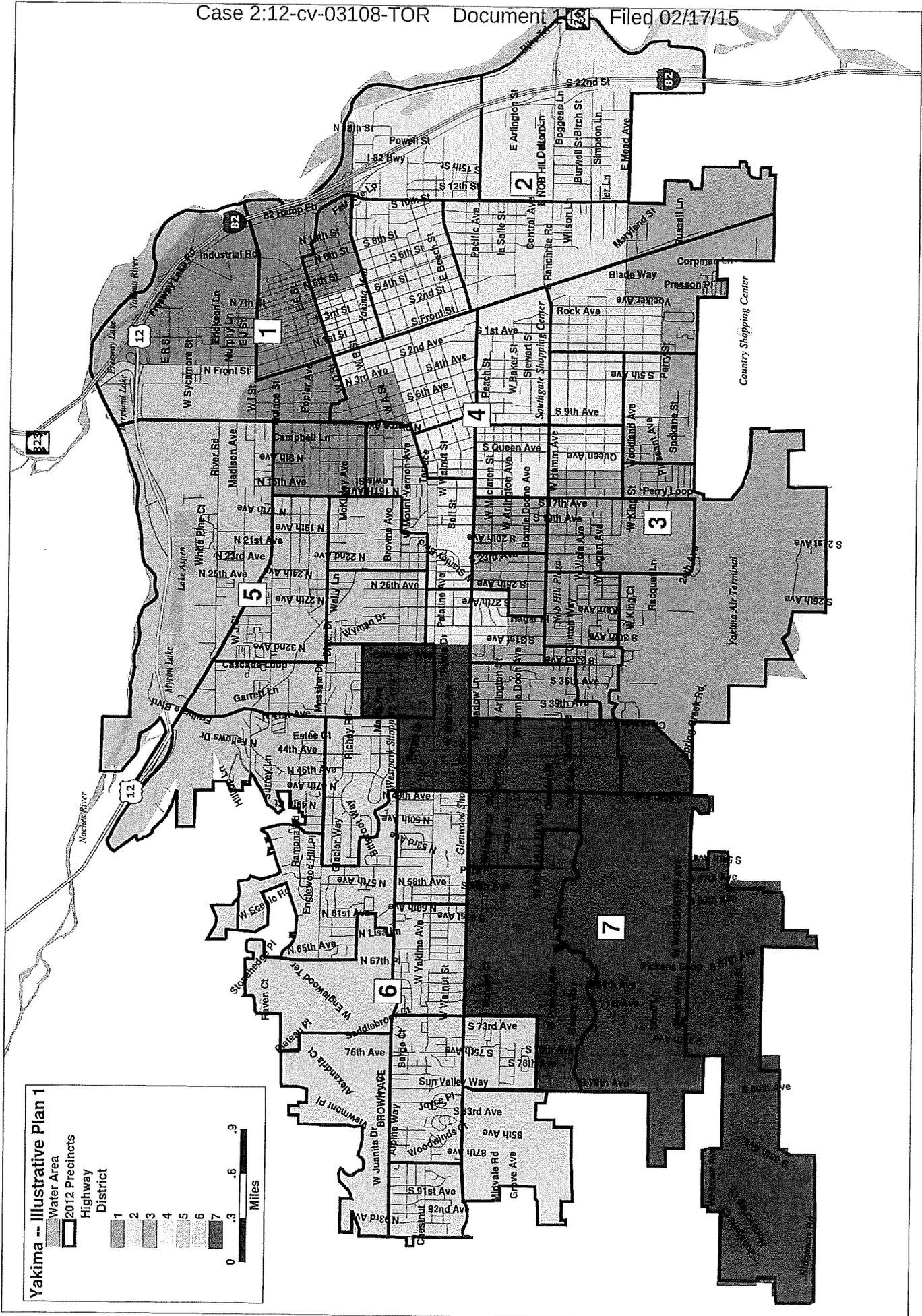
The District Court Executive is hereby directed to enter this Order, enter **Judgment** accordingly, and provide copies to counsel.

DATED February 17, 2015.



Thomas O. Rice
THOMAS O. RICE
United States District Judge

EXHIBIT A



Yakima -- Illustrative Plan 1

- Water Area
- 2012 Precincts
- Highway
- 1
- 2
- 3
- 4
- 5
- 6
- 7

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Population Summary Report

Yakima City Council --Illustrative Plan 1

District	Population	Deviation	% Deviation	Hispanic	% Hispanic	Minority	% Minority	Group Quarters Incarcerated	Group Quarters College Dorms	Group Quarters Military
1	12533	-497	-3.81%	9626	76.81%	10227	81.60%	0	0	0
2	13358	328	2.52%	9713	72.71%	10505	78.64%	273	0	0
3	12859	-171	-1.31%	4395	34.18%	5297	41.19%	0	91	0
4	13175	145	1.11%	5724	43.45%	6761	51.32%	778	0	0
5	12683	-347	-2.66%	3668	28.92%	4464	35.20%	0	0	0
6	13176	146	1.12%	1820	13.81%	2648	20.10%	0	0	0
7	13283	253	1.94%	2641	19.88%	3642	27.42%	58	0	0
Total	91067			37587	41.27%	43544	47.82%	1109	91	0
Ideal	13030									
Total Deviation			6.33%							

District	18+ Pop	18+ Hispanic	% 18+ Hispanic	18+ NH Indian	% 18+ NH Indian	18+ Minority	% 18+ Minority	% Latino CVAP	% Latino Registered (of all registered)	% Latino Citizens (all ages)
1	7604	5335	70.16%	195	2.56%	5748	75.59%	54.51%	52.78%	71.93%
2	8545	5639	65.99%	182	2.13%	6182	72.35%	46.31%	53.35%	63.26%
3	9377	2564	27.34%	222	2.37%	3200	34.13%	24.80%	18.18%	32.22%
4	9716	3523	36.26%	334	3.44%	4301	44.27%	26.69%	25.24%	34.57%
5	9801	2152	21.96%	247	2.52%	2755	28.11%	12.21%	14.48%	20.17%
6	10175	1083	10.64%	125	1.23%	1612	15.84%	7.11%	6.91%	11.39%
7	10069	1541	15.30%	172	1.71%	2199	21.84%	15.14%	10.59%	23.24%
Total	65287	21637	33.45%	1477	2.26%	25997	39.82%	22.66%	19.56%	34.34%

Notes:

- (1) Group quarters data are from the 2010 Advance Group Quarters File released by the Census Bureau on April 20, 2011
- (2) With post-Census 2010 annexation affecting Districts 6 and 7, current city population is 91,208. Deviation is calculated based on ideal district size of 13,030 (91,208/7).
- (3) % LCVPAP calculated by disaggregating 2008-2012 ACS block group estimates for 18+ citizen Hispanics and Non-Hispanics to 2010 census blocks.
- (4) % Latino registered based on Spanish surname match to registered voter list current through mid-March 2014
- (5) % Latino citizen calculated by disaggregating 2008-2012 ACS block group estimates for citizen Hispanics and Non-Hispanics to 2010 census blocks.



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AUTHORITY OF CODE CITES TO MODIFY SYSTEM FOR ELECTING CITY COUNCIL MEMBERS TO COMPLY WITH FEDERAL VOTING RIGHTS ACT



(<http://www.atg.wa.gov>)

AGO 2016 No. 1 - Jan 28 2016

Attorney General Bob Ferguson

ELECTIONS—CITIES AND TOWNS—FEDERAL PREEMPTION—Authority Of Code Cites To Modify System For Electing City Council Members To Comply With Federal Voting Rights Act

1.State law allows a code city to divide into wards for use at the primary for nominating candidates for the city council but requires that all city council members be elected at large at the general election.

2.A code city may choose to use wards for both nominating candidates in the primary and for electing city council members at the general election if, but only if, the city has a strong basis in evidence for concluding that Section 2 of the federal Voting Rights Act compels the city to do so.

January 28, 2016

The Honorable Pam Roach
State Senator, District 31
PO Box 40431
Olympia, WA 98504-0431

Cite As:
AGO 2016 No. 1

Dear Senator Roach:

By letter previously acknowledged, you have requested our opinion on the following question:

May a non-charter code city subject to RCW 35A.12.180, having a large minority population, adopt a district-based general election procedure to avoid a potential violation of section 2 of the federal Voting Rights Act?

BRIEF ANSWER

Yes. RCW 35A.12.180 allows certain cities to use districts for conducting city council primary elections but requires a citywide vote at the general election. We conclude that a city subject to RCW 35A.12.180 may both nominate and elect positions on its city council by district, but only if the city has a strong basis in evidence to conclude that its proposed change is necessary to comply with the federal Voting Rights Act (VRA). 52 U.S.C. §§ 10301-10314.

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FACTUAL BACKGROUND

Your question arises out of a situation in the City of Pasco. Pasco has opted pursuant to state law to divide itself into five wards (or districts), which are used in electing five of the city's seven positions on its city council. Candidates for the five positions nominated by ward must be residents of that ward, and only the voters in that ward may vote for the position at the primary. The top two candidates at the primary then advance to the general election, which is conducted city-wide with participation from all voters throughout the city. RCW 35A.12.180. Candidates for those five positions are thus nominated by ward, but elected at large.

[2] The other two positions are both nominated and elected by the entire city at large. RCW 35A.12.040.

Pasco is considering changing this voting system because of concern that its current system may violate the VRA. This concern arises for a number of reasons, but in large part because Pasco is home to a substantial Hispanic population

and the nearby city of Yakima recently saw its electoral system rejected as violating the VRA. *Montes v. City of Yakima*, 40 F. Supp. 3d 1377 (E.D. Wash. 2014), *appeal docketed*, No. 15-35309 (9th Cir. Apr. 21, 2015). In order to avoid similar litigation, Pasco proposed to amend its municipal code to provide for both the primary and general elections to be conducted by ward. This proposal would entail both nominating and electing five positions on the city council by ward, rather than the positions being nominated by ward and elected at large. The other two positions would continue to be both nominated and elected at large.

[3] The city submitted this proposal to the county auditor, who serves as the ex officio election officer for the county and for the cities within the county. RCW 29A.04.216, .330; RCW 36.22.220. The auditor responded that state law did not authorize the auditor to conduct the election in this changed manner on behalf of the city. Letter from Matt Beaton, Franklin County Auditor, to Dave Zabell, Pasco City Manager (Apr. 17, 2015).

The city council then adopted an ordinance that expresses its desire to change its electoral system, but retains its current system due to the question of its authority to make the change. Pasco Ordinance No. 4218, <https://egov-pasco.com/weblink8/0/doc/541388/Page1.aspx> (<https://egov-pasco.com/weblink8/0/doc/541388/Page1.aspx>) (last visited Jan. 6, 2016). You pose your question to clarify the city's authority to determine the manner in which its city council elections are conducted.

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ANALYSIS

Our analysis consists of three parts. First we consider the scope of your question, noting several topics we cannot explore in an Attorney General Opinion. Second, we consider how your question would be analyzed under state law if state law were the only relevant consideration. We conclude that considering state law in isolation, a code city is generally required to conduct general elections for city council at large throughout the city, and therefore a code city is generally prohibited from limiting general elections to voters within each ward. Third, we turn to the effect of federal law on our state law analysis. The third section is the most complex and gives rise to more than one possible interpretation of the law. Although there is no case law directly on point, we conclude that a code city would be justified in conducting its city council elections in a way that is otherwise inconsistent with state law if, but only if, the code city can establish a strong basis in evidence for concluding that federal law compels its action. If its

electoral process were challenged in court, we believe the code city would bear the burden of proving such a strong basis in evidence. We believe that a party challenging the city's decision could then prevail only by showing that federal law did not, in fact, require the city to deviate from state election law.

A. Scope Of Analysis

Before beginning our analysis, we pause to explain what we are and are not able to address in this opinion.

First, although your question arises in the context of a specific city, our analysis will necessarily be general. Attorney General Opinions do not resolve factual issues, and as we explain below, any conclusion that a particular city might be violating the VRA would be deeply fact dependent. Thus, we offer no opinion as to whether Pasco or any other city is, or is not, currently violating the VRA.

Second, our opinion expresses no view as to whether Pasco or any other city *should* elect its city council in any particular way. Instead, it simply analyzes what options are available to code cities. Our formal opinions provide analysis of legal issues, but are not a forum for advocating public policy.

Finally, while this opinion highlights a very difficult question created by current state law as to code cities facing potential VRA claims, it is worth noting that this difficulty could easily be fixed by the legislature. If the legislature allowed code cities to conduct general elections by district, cities like Pasco would not face the dilemma and uncertainty described here.

With these parameters in mind, we turn to the legal analysis of your question.

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[4] **B. Authority Of A Code City Under State Law To Determine The Manner By Which Its City Council Is Elected**

You ask specifically about the authority of a code city, such as Pasco, to both nominate and elect its city council by ward. The term "code city" refers to a city that has chosen to organize under the Optional Municipal Code. RCW 35A.01.035.

The legislative body of a code city has the "power to organize and regulate its internal affairs within the provisions of this title and its charter."

RCW 35A.11.020. "The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law."

RCW 35A.11.020. The question under state law therefore becomes whether adopting an electoral structure under which members of a city council are both nominated and elected by ward is specifically denied to code cities by law. RCW 35A.11.020.

The ways in which code cities may elect city council members are set out in general law. "Elections to positions on the council shall be by majority vote from the city at large, unless provision is made by charter or ordinance for election by wards." RCW 35A.12.040. State law therefore specifies the default method for electing city council members in code cities. Such elections are held at large, unless the city has opted for a different system either by charter or through an ordinance providing for election by wards.

The option to elect city council members by ward is also described in statute:

At any time not within three months previous to a municipal general election *the council* of a noncharter code city organized under this chapter *may divide the city into wards or change the boundaries of existing wards*. No change in the boundaries of wards shall affect the term of any councilmember, and councilmembers shall serve out their terms in the wards of their residences at the

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time of their elections: PROVIDED, That if this results in one ward being represented by more councilmembers than the number to which it is entitled those having the shortest unexpired terms shall be assigned by the council to wards where there is a vacancy, and the councilmembers so assigned shall be deemed to be residents of the wards to which they are assigned for purposes of those positions being vacant. *The representation of each ward in the city council shall be in proportion to the population as nearly as is practicable.*

Wards shall be redrawn as provided in chapter 29A.76 RCW. *Wards shall be used as follows: (1) Only a resident of the ward may be a candidate for, or hold office as, a councilmember of the ward; and (2) only voters of the ward may vote at a primary to nominate candidates for a councilmember of the ward. Voters of the entire city may vote at the general election to elect a councilmember of a ward, unless the city had prior to January 1, 1994, limited the voting in the general election for any or all council positions to only voters residing within the ward associated with the council positions. If a city had so*
[7] *limited the voting in the general election to only voters residing within the ward, then the city shall be authorized to continue to do so.*

RCW 35A.12.180 (emphases added).

Thus, a code city is authorized to divide the city into wards of equal population, "as nearly as is practicable." RCW 35A.12.180. If the city chooses to do so, then candidates for each position must live in the corresponding ward, and only voters of that ward would be eligible to vote in the primary. But at the general election, the statute specifies that "[v]oters of the entire city may vote." RCW 35A.12.180. Thus, RCW 35A.12.180 specifically denies to code cities the authority to restrict voting by ward at the general election. Therefore, a local ordinance that provided for general elections by ward would conflict with RCW 35A.12.180 and be preempted by state law. *See Cannabis Action Coal. v. City of Kent*, 183 Wn.2d 219, 225-26, 351 P.3d 151 (2015) (ordinances that conflict with state law are preempted).

State law on its own therefore does not allow a code city to provide for the election of its city council members by ward. Wards may be used to nominate candidates at the primary, but state law requires that all voters of a code city be permitted to vote in each city council race at the general election. RCW 35A.12.180. We therefore turn to the question of whether a code city might be compelled by federal law to elect its council members differently than as provided by RCW 35A.12.180.

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C. A Code City May Adopt An Ordinance Providing For Both Nomination And Election Of City Council Members By Ward If Compelled To Do So By Federal Law

Having concluded that state law requires that all voters of code cities be permitted to vote in each city council race at the general election, we next consider whether a city may deviate from this rule to avoid a violation of Section 2 of the VRA, 52 U.S.C. § 10301(b). We conclude that a city may conduct general elections by ward when it has a strong basis in evidence to conclude that acting otherwise would violate Section 2. Determining whether Section 2 requires changes to local election processes is a highly fact-specific analysis that local jurisdictions must undertake on a case-by-case basis and that would be subject to judicial review.

Section 2 prohibits any state or political subdivision of a state from using any standards, practices, or procedures that deny or abridge the right of citizens to vote on account of their race, color, or membership in a language minority group. 52 U.S.C. § 10301 (formerly codified as 42 U.S.C. § 1973). "A Section 2 violation is any political process leading to an election that is not 'equally open [8] participation' by a minority group 'in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.'" *Ruiz v. City of Santa Maria*, 160 F.3d 543, 549 (9th Cir. 1998) (quoting former 42 U.S.C. § 1973(b)). "Section 2 'requires proof only of a discriminatory result, not of discriminatory intent.'" *Id.* (quoting *Smith v. Salt River Project Agric. Improvement & Power Dist.*, 109 F.3d 586, 594 (9th Cir. 1997)).

The United States Constitution establishes the supremacy of federal law within the ambit of its authority. U.S. Const. art. VI, cl. 2. "When the Federal Government acts within the authority it possesses under the Constitution, it is empowered to pre-empt state laws to the extent it is believed that such action is necessary to achieve its purposes." *City of New York v. FCC*, 486 U.S. 57, 63 (1988). Thus, state laws that directly conflict with federal law yield to federal law. *City of Tacoma v. Taxpayers of Tacoma*, 43 Wn.2d 468, 483, 262 P.2d 214 (1953).

Where state and federal laws conflict, the Washington Supreme Court holds that a conflicting state law cannot stand as an obstacle to compliance with federal law as determined by a federal court order. *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 951, 603 P.2d 819 (1979) (state law could not "survive the superior force of federal law" after the United States Supreme Court had construed a tribal treaty governing fishing rights). That is, once a violation of federal law is found, it is not necessary to await the enactment of a conforming state law for a state agency to comply with federal law. *Id.*

The circumstance you ask about differs from *Puget Sound Gillnetters Association* in a significant way. In that case, the courts had already reached a conclusion as to the application of federal law. *Puget Sound Gillnetters Ass'n*, 92 Wn.2d at 951. In contrast, you ask about a

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scenario in which there has been no litigation but a code city desires to change its voting system in a way precluded by state law in order to avoid Section 2 liability. We therefore consider whether federal law might compel a city's action even without a judicial finding.

Federal cases under the VRA emphasize that the VRA will only compel a violation of an otherwise-controlling state law if that violation is necessary to avoid violating Section 2.

This is because, as the Tenth Circuit explained, the remedy for a VRA violation must "adhere as closely as possible to the contours of the governing state law." *Large v. Fremont County*, 670 F.3d 1133, 1135 (10th Cir. 2012). The court emphasized that in forming a remedy for a VRA violation, the county was "not free to disregard state law." *Id.* at 1137. Concluding that federal courts should defer to state law (and not to local legislative bodies), the court declined to give deference to the county's plan that did not hew as closely as possible to state law. *Id.* at 1142, 1146. The court reasoned that:

[T]he mere fact that some state laws may necessarily need to be displaced to permit the effectuation of a federal civil-rights remedy under Section 2 does not mean that local governmental bodies like the County may unnecessarily—as a matter of preference—disregard the dictates of state law in fashioning their plans and still claim the judicial deference for their handiwork that is traditionally accorded to legislative plans.

Id. at 1144. State law can be abrogated when it is necessary to do so, but only if the law is an "unavoidable obstacle" to compliance with the federal law. *Id.* at 1145.

"The same cannot be said where in the course of remedying an adjudged Section 2 violation a local governmental entity gratuitously disregards state laws—laws that need not be disturbed to cure the Section 2 violation." *Id.* (citing *Cleveland County Ass'n for Gov't by the People v. Cleveland County Bd. of Comm'rs*, 142 F.3d 468, 477 (D.C. Cir. 1998)). As the District of Columbia Circuit expressed the matter, "if a violation of federal law necessitates a remedy barred by state law, the state law must give way; if no such violation exists, principles of federalism dictate that state law governs." *Cleveland County Ass'n for Gov't by the People*, 142 F.3d at 477. As the Seventh Circuit put it, parties to litigation cannot use that litigation simply as a way of evading valid state law, and cannot simply agree to do something they would otherwise lack the authority to do. *Perkins v. City of Chicago Heights*, 47 F.3d 212, 216 (7th Cir. 1995). Though a local government "may chafe at [state law] restraints and seek to evade them . . . they

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may not do so by agreeing to do something state law forbids." *Perkins*, 47 F.3d at 216 (citation omitted) (internal quotation marks omitted).

Even when a lawsuit under the VRA has been commenced, a city is not free to simply ignore state law in settling that suit except where it is necessary to do so in order to comply with federal law. *League of Residential Neigh. Advocates v. City of Los Angeles*, 498 F.3d 1052, 1055 (9th Cir. 2007). As the Ninth Circuit put it, “[a] federal consent decree or settlement agreement cannot be a means for state officials to evade state law.” *Id.* A local government may therefore violate state law if—but only if—it is necessary to do so in order to remedy a violation of federal law. *Id.*; *Large*, 670 F.3d at 1145; *Cleveland County Ass’n for Gov’t by the People*, 142 F.3d at 477; *Perkins*, 47 F.3d at 216. Adopting a remedy for violation of federal law that, in turn, violates state law “is authorized only when the federal law in question mandates the remedy[.]” *St. Charles Tower, Inc. v. Kurtz*, 643 F.3d 264, 271 (8th Cir. 2011) (quoting *League of Residential Neigh. Advocates*, 498 F.3d at 1058).

The cases discussed in the paragraphs above might be read in two ways. One way is to conclude that a state or local jurisdiction is empowered to ignore state law only if a court has found a violation of state law. In the context of reviewing a consent decree approved by a district court to settle a VRA dispute, the Seventh Circuit explained: “Once a court has found a federal constitutional or statutory violation . . . a state law cannot prevent a necessary remedy.” *Perkins*, 47 F.3d at 216 (emphasis added). That is, state law can be set aside “upon properly supported findings that such a remedy is necessary to rectify a violation of federal law[.]” *Id.* (first emphasis added). So one possible conclusion is that a code city may only disregard the prohibition in RCW 35A.12.180 against using wards at general elections (as opposed to only at primaries) if a court first rules that the city has violated Section 2 and imposes such an electoral system as a remedy.

An obvious problem with that reading of the cases is that it precludes resolving a known problem before being sued. This would both perpetuate a violation of a federal civil rights law and incur the expense that comes with litigation under the VRA. Of course, the legislature could step in with a statutory remedy that expands the authority of code cities to determine their electoral processes. But absent that, reading current law to forbid an action until a violation of federal law is judicially determined “would bring compliance efforts to a near standstill.” *Ricci v. DeStefano*, 557 U.S. 557, 581, 129 S. Ct. 2658, 174 L. Ed. 2d 490 (2009); see also, e.g., *Lindsay v. City of Seattle*, 86 Wn.2d 698, 706, 548 P.2d 320, cert. denied sub nom. *Brabant v. City of Seattle*, 429 U.S. 886 (1976) (holding that “voluntary compliance, rather than court ordered relief,” is the preferred method of complying with civil rights statutes).

We believe that the *Ricci* case just cited provides helpful guidance as to how to proceed. *Ricci* arose under federal civil rights laws governing employment. A city discarded the results of a promotional test for captains and lieutenants in its fire department based on allegations that the test results showed that the test was discriminatory. White and Hispanic firefighters, who likely would have been promoted based on the examination results, sued alleging disparate treatment based on race. The city defended based on the argument that using the exam results would have

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resulted in disparate-impact liability (employers may not use metrics that have racially disparate impacts unless those metrics are job-related and consistent with business necessity). *Ricci*, 557 U.S. at 562-63. The Court noted that without some justification, the city’s action in discarding the test results for expressly race-based reasons would violate the federal prohibition against adverse employment actions based on race. *Id.* at 579. The Court therefore faced the question of “whether the purpose to avoid disparate-impact liability excuses what otherwise would be prohibited disparate-treatment discrimination.” *Id.* at 580. The Court concluded that the city’s action in discarding its examination was justified if, but only if, the city had “a strong basis in evidence” for concluding that its action was necessary to avoid liability for disparate impact based on race. *Id.* 582 (emphasis added). That is, the city in *Ricci* could defend its disparate treatment based on race, in violation of one federal law, if it had a strong basis in evidence that its action was necessary to avoid violating another law. *Id.* at 582-83.

We are not aware of any Washington court that has addressed the question of what level of evidence is required before a code city may disregard state law in order to comply with federal law. We believe that a Washington court would apply a standard similar to the “strong basis in evidence” standard applied in *Ricci*, a standard the U.S. Supreme Court has also applied in a range of voting rights cases. See, e.g., *Abrams v. Johnson*, 521 U.S. 74, 91, 117 S. Ct. 1925, 138 L. Ed. 2d 285 (1997) (citing *Shaw v. Reno*, 509 U.S. 630, 656, 113 S. Ct. 2816, 125 L. Ed. 2d 511 (1993)). As applied here, the “strong basis in evidence” standard would leave room for a code city to voluntarily comply with Section 2 when it has a strong basis in evidence for believing that it is necessary to act contrary to state law in order to comply with federal law. See *Ricci*, 557 U.S. at 583. Under this approach, a code city would be

justified in electing members to its city council by ward at both the primary and general election, in violation of RCW 35A.12.180, if—but only if—it had a strong basis in evidence for concluding that this action was compelled by federal law, in order to avoid violating Section 2. This would be so even if the code city was not sued first.

But to develop this strong basis in evidence it would be necessary to develop sufficient facts to provide a basis for concluding that Section 2 compels the city's action. The question of whether any particular voting practice places a specific jurisdiction in violation of the VRA involves an inquiry into the totality of the factual circumstances and the application of federal law to those facts. See, e.g., *Farrakhan v. Gregoire*, 623 F.3d 990, 992-93 (9th Cir. 2010) (en banc) (discussing the application of the VRA to Washington's laws regarding disenfranchisement of convicted felons). Satisfying the "strong basis in evidence" standard therefore necessarily involves developing a factual basis for concluding that federal law compels the course of action the city takes. See *Margerum v. City of Buffalo*, 24 N.Y.3d 721, 731-32, 28 N.E.3d 515, 5 N.Y.S.3d 336 (2015) (applying *Ricci*).

A city need not be *certain* that its current

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system violates federal law to have a strong basis in evidence, but it must "have *good reasons* to believe" that its current system violates federal law to meet the strong basis in evidence standard. *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1274, 191 L. Ed. 2d 314 (2015).

Of course, a code city that chose to switch to a district election system for its general election could potentially be sued for violating state law. In such a lawsuit, we believe state courts might well adopt a burden shifting approach like the one adopted by courts applying *Ricci* in the employment context. See, e.g., *id.*; *Maraschiello v. City of Buffalo Police Dep't*, 709 F.3d 87, 93-94 (2d Cir.) *cert. denied*, 134 S. Ct. 119 (2013); *United States v. Brennan*, 650 F.3d 65, 93-94 (2d Cir. 2011). If the plaintiffs could show that the city's voting system deviated from state law, then the burden would shift to the city to show that it adopted that deviation because of a strong basis in evidence to conclude that doing otherwise would violate Section 2. If the city could not make such a showing, its deviation from state law would be struck down. If it could make such a showing, the burden would shift to the plaintiff to prove that, in fact, although the city had a strong basis in evidence, there ultimately was no Section 2 violation.

In sum, code cities in Washington that believe they may be in violation of the VRA face difficult decisions and potential legal risk regardless of what course they choose. The legislature could rectify this situation by giving code cities greater authority to structure their general election processes. In the meantime, code cities do have some discretion. If they develop a strong basis in evidence to believe that they are violating Section 2, we believe that they would be justified in deviating from state law to comply with federal law. Such a conclusion would be highly dependent on the facts in any city and would require substantial research and factual support. Code cities will need to weigh their individual factual circumstances and the legal risks in making their decisions. Either course of action, whether to adhere to state law or to depart from it, may be subject to challenge in court.

We trust that the foregoing will be useful to you.

ROBERT W. FERGUSON

Attorney General

JEFFREY T. EVEN

Deputy Solicitor General

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During the time we have been working on this opinion, the United States Court of Appeals for the Ninth Circuit issued an opinion holding that a somewhat similar voting system used by the City of Tucson, Arizona, is unconstitutional for reasons unrelated to the Voting Rights Act or to any of the issues considered in this opinion. *Pub. Integrity All., Inc. v. City of Tucson*, 805 F.3d 876 (9th Cir. 2015). The system at issue in that case is not entirely the same as the system currently used in Pasco, and the issues considered in that case are distinctly different than the topic of your question. That opinion thus has no direct effect on our analysis of your question.

[2] Pasco's Hispanic population is estimated at 55.3 percent of the city's population as of 2013. U.S. Census Bureau, American Fact Finder, data for City of Pasco, Washington, http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml (last visited Jan. 6, 2016).

[4] Your question concerns the authority of a code city, rather than the authority of a county auditor. This opinion therefore does not address the question of whether the county auditor acted within his authority.

This is only one of several ways in which cities can organize. Other forms of city organization include first class cities, second class cities, and towns. RCW 35.01.010 (first class cities, also known as charter cities); RCW 35.01.020 (second class cities); RCW 35.01.040 (towns). The internal organization of each of these types of cities can differ from that of code cities. See RCW 35.22 (first class cities); RCW 35.23 (second class cities); RCW 35.27 (towns). This opinion does not consider how your question might be answered if it had been posed with regard to any of these other types of city.

[6] Code cities have the option of organizing under their own charters, thus becoming charter code cities. RCW 35A.08.010. This opinion does not address charter code cities, whose internal organization is governed by their charters.

The state constitution grants cities broad powers to "make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." Wash. Const. art. XI, § 11. The optional municipal code reflects this broad authority, but limits it to powers "not specifically denied to code cities by law." RCW 35A.11.020. What might otherwise be a constitutional analysis accordingly collapses into consideration of whether a particular power is specifically denied by statute. See, e.g., *Housing Auth. of the City of Pasco & Franklin County v. City of Pasco*, 120 Wn. App. 839, 844-45, 86 P.3d 1217 (2004); see also Hugh Spitzer, "Home Rule" vs. "Dillon's Rule" for Washington Cities, 38 Seattle U. L. Rev. 809, 841-42 (2015) (discussing the scope of authority of code cities).

RCW 35A.12.180 appears in the statutory chapter relating to code cities using the mayor-council plan of government. Code cities opting for the council-manager form of government are also subject to the same provisions for electing council members. RCW 35A.13.020 (incorporating by reference RCW 35A.12.040, which in turn incorporates RCW 35A.12.180 by providing for the option of using wards).

[9] Thus, for a code city to rely on Section 2 would not entail admitting to a past discriminatory intent. *Ruiz*, 160 F.3d at 549.

In two cases the United States Supreme Court has considered efforts by a state to use Section 2 as a defense against allegations that the state had violated state law in drawing legislative or congressional districts. *Bartlett v. Strickland*, 556 U.S. 1, 6-7, 129 S. Ct. 1231, 173 L. Ed. 2d 173 (2009) (legislative district plan divided counties in contradiction of North Carolina Constitution); *Shaw v. Hunt*, 517 U.S. 899, 915-16, 116 S. Ct. 1894, 135 L. Ed. 2d 207 (1996) (state relied upon a "strong basis in evidence" that consideration of race in drawing congressional district boundaries was necessary to avoid a Section 2 violation). The Court ultimately resolved both cases in ways that shed little light on your question. They provide only minimal support to our analysis by illustrating that some jurisdictions have used Section 2 in an attempt to justify an action.

This is not a task to take lightly. The factual inquiry involved can be complex, requiring consideration of several threshold factors, followed by an inquiry into the totality of the circumstances applicable to elections in the jurisdiction. *Thornburg v. Gingles*, 478 U.S. 30, 50, 106 S. Ct. 2752, 92 L. Ed. 2d 25 (1986) (reciting threshold factors); *Johnson v. De Grandy*, 512 U.S. 997, 1011-12, 114 S. Ct. 2647, 129 L. Ed. 2d 775 (1994) (describing the totality of the circumstances analysis).

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RCW 35.18.020

Number of councilmembers—Wards, districts—Terms—Vacancies.

(1) The number of councilmembers in a city or town operating with a council-manager plan of government shall be based upon the latest population of the city or town that is determined by the office of financial management as follows:

(a) A city or town having not more than two thousand inhabitants, five councilmembers; and

(b) **A city or town having more than two thousand, seven councilmembers.**

(2) **Except for the initial staggering of terms, councilmembers shall serve for four-year terms of office.** All councilmembers shall serve until their successors are elected and qualified and assume office in accordance with RCW 29A.60.280. **Councilmembers may be elected on a citywide or townwide basis, or from wards or districts, or any combination of these alternatives.** Candidates shall run for specific positions. Wards or districts shall be redrawn as provided in chapter 29A.76 RCW. Wards or districts shall be used as follows: **(a) Only a resident of the ward or district may be a candidate for, or hold office as, a councilmember of the ward or district; and (b) only voters of the ward or district may vote at a primary to nominate candidates for a councilmember of the ward or district. Voters of the entire city or town may vote at the general election to elect a councilmember of a ward or district,** unless the city or town had prior to January 1, 1994, limited the voting in the general election for any or all council positions to only voters residing within the ward or district associated with the council positions. If a city or town had so limited the voting in the general election to only voters residing within the ward or district, then the city or town shall be authorized to continue to do so.

(3) When a city or town has qualified for an increase in the number of councilmembers from five to seven by virtue of the next succeeding population determination made by the office of financial management, two additional council positions shall be filled at the next municipal general election with the person elected to one of the new council positions receiving the greatest number of votes being elected for a four-year term of office and the person elected to the other additional council position being elected for a two-year term of office. The two additional councilmembers shall assume office immediately when qualified in accordance with RCW 29A.04.133, but the term of office shall be computed from the first day of January after the year in which they are elected. Their successors shall be elected to four-year terms of office.

Prior to the election of the two new councilmembers, the city or town council shall fill the additional positions by appointment not later than forty-five days following the release of the population determination, and each appointee shall hold office only until the new position is filled by election.

(4) When a city or town has qualified for a decrease in the number of councilmembers from seven to five by virtue of the next succeeding population determination made by the office of financial management, two council positions shall be eliminated at the next municipal general election if four council positions normally would be filled at that election, or one council position shall be eliminated at

Appendix 7

- William S. (“Bill”) Cooper 2016 City of Wenatchee Methodology
- William S. Cooper Summary of Redistricting Work
- RCW 29A.76.010 Criteria for drawing districts

2016 City of Wenatchee Draft Redistricting Plans

1. My name is William S. Cooper. I am a redistricting and demographic consultant in private practice. A summary of my nationwide redistricting experience is attached.

Methodology and Sources

2. For this analysis, I used a geographic information system software package called *Maptitude for Redistricting*, developed by the Caliper Corporation. This software is deployed by many local and state governing bodies across the country for redistricting and other types of demographic analysis.

3. The Census 2010 geographic boundary files that I used with *Maptitude* are created from the U.S. Census 2010 TIGER (Topologically Integrated Geographic Encoding and Referencing) files. The population data is from the 2010 PL 94-171 data file. This dataset is published in electronic format and is the complete count population file designed by the U.S. Census Bureau for use in legislative redistricting. The file contains basic race and ethnicity data on the population and voting age population found in units of census geography such as states, counties, municipalities, townships, reservations, school districts, census tracts, census block groups, and census blocks.

4. *The Maptitude for Redistricting* software processes the TIGER files to produce a map for display on a computer screen. The software also merges demographic data from the PL94-171 file to match the 2010 Census geography.

5. I created demonstration plans at the census block level from the 2010 Census using *Maptitude for Redistricting*. A census block is the smallest geographic tabulation area from the decennial census. A block may be as small as a regular city block bounded by four streets, or as large as several square miles in a rural area. Generally, a census block is bounded on all sides by visible features such as streets, rivers, and railroad tracks.

6. The City of Wenatchee gave me a GIS file delineating neighborhood boundaries.

7. The City also gave me PDF maps showing post-Census 2010 annexations and potential future annexations. I used the PDFs and a U.S. Census Bureau Urban Growth Area (UGA) shapefile to adjust the population of the city to take into account annexations.

8. In addition, I obtained an electronic GIS shapefile with current precinct boundaries for Wenatchee and Chelan County from the Chelan County GIS Department website.

9. The City of Wenatchee also gave me a GIS shapefile with address points and surnames for all registered voters in Wenatchee as of November 2015.

10. In order to determine Latino registered voters, I relied on a Microsoft *Excel* file that lists over 12,000 Spanish surnames. This file was prepared by the U.S. Department of Justice (DOJ) in order to identify Latino voters. I used the Spanish surname file to identify Latino voters in the November 2015 registered voter list.

11. I matched the November 2015 registered voter list to the Spanish surname list using a Microsoft *Access* routine. In short, I parsed the surname for all registered voters and then marked all persons with a matching Spanish surname. This match includes a few persons with surnames that only in part match Spanish surnames on the DOJ list. (For example, the compound surname “Vega de la Fuente” would be marked as a Spanish surname because both “Vega” and “Fuente” are Spanish surnames on the DOJ list.)

12. I then assigned registered voters and Latino registered voters by census block, allowing for precise tabulations of the number of registered voters and Latino voters at the election district level.

13. Because I did not have access to a list of registered voters in the potential annexation area of South Wenatchee, the Latino registered voter percentages I report are probably understated for districts encompassing South Wenatchee.

14. I developed block-level estimates of the citizen voting age population (Hispanic and non-Hispanic) from the block group estimates in the *2010-2014 American Community Survey 5-year Estimates* dataset prepared by the U.S. Census Bureau.¹ I allocated the estimated Hispanic and non-Hispanic block group citizen voting age population to census blocks based on the complete count block-level voting age Hispanic and non-Hispanic population, according to the 2010 Census. (Census block estimates of the citizen voting age population are not available from the *American Community Survey* or any other Census Bureau publication.) The citizen voting age population estimates take into account potential annexation areas.

15. In a few instances, newly annexed areas or potential annexations split census blocks. Where these minor anomalies occurred, I used the “whole block” criterion employed by the Census Bureau to approximate annexed areas. This visual method assigns all or none of the population in a split census block to the city population.²

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¹ This special file is released on an annual basis at the block group-level. I relied on the most recent dataset, which was released in February 2016 and is available for download at:

http://www.census.gov/rdo/data/voting_age_population_by_citizenship_and_race_cvap.html

² See *A Guide to State and Local Census Geography*, U.S. Census Bureau, 1993, p.10.

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Summary of Redistricting Work

I have a B.A. in Economics from Davidson College in Davidson, North Carolina.

Since 1986, I have prepared proposed redistricting maps of approximately 700 jurisdictions for Section 2 litigation, Section 5 comment letters, and for use in other efforts to promote compliance with the Voting Rights Act of 1965. I have analyzed and prepared election plans in over 100 of these jurisdictions for two or more of the decennial censuses – either as part of concurrent legislative reapportionments or, retrospectively, in relation to litigation involving many of the cases listed below.

Since the release of the 2010 Census in February 2011, I have developed statewide legislative plans on behalf of clients in seven states (Alabama, Florida, Georgia, Kentucky, South Carolina, Texas, and Virginia), as well as over 150 local redistricting plans in approximately 30 states – primarily for groups working to protect minority voting rights.

In March 2011, I was retained by the Sussex County, Virginia Board of Supervisors and the Bolivar County, Mississippi Board of Supervisors to draft new district plans based on the 2010 Census. In the summer of 2011, both counties received Section 5 preclearance from the Department of Justice.

Also in 2011, I was retained by way of a subcontract with Olmedillo X5 LLC to assist with redistricting for the Miami-Dade County, Florida Board of Commissioners and the Miami-Dade, Florida School Board. Final plans were adopted in late 2011 following public hearings.

In the fall of 2011, I was retained by the City of Grenada, Mississippi to provide redistricting services. The ward plan I developed received preclearance in March 2012.

In 2012 and 2013, I served as a redistricting consultant to the Tunica County, Mississippi Board of Supervisors and the Claiborne County, Mississippi Board of Supervisors.

I currently serve as a redistricting consultant to the City of Decatur, Ala. (in *Voketz v. City of Decatur*) and as a redistricting consultant to the City of Wenatchee, Wash. I also serve as a redistricting consultant to the ACLU of Washington.

I am currently a consultant and expert for the plaintiffs in *Alabama Legislative Black Caucus et al. v. Alabama*; *Navajo Nation v. San Juan County, Utah*; *Fairley et al. v. Hattiesburg, Mississippi*; *Terrebonne Parish Branch NAACP et al. v. Jindal et al.*; *Davidson v. City of Cranston, Rhode Island*; *Missouri State Conference NAACP et al. v. Ferguson-Florissant School District*; and *NAACP v. Emanuel County, Georgia*.

In *Montes v. City of Yakima* (E.D. Wash. Feb. 17, 2015) the court adopted, as a remedy for the Voting Rights Act Section 2 violation, a seven single-member district plan that I developed for the Latino plaintiffs. In *Pope v. Albany County* (N.D.N.Y. Mar. 24, 2015), the court approved, as a remedy for the Section 2 violation, a plan drawn by the defendants, creating a new Black-majority district. The plaintiffs consented to that plan, and the plan was implemented for elections in 2015. On January 14, 2016, in *NAACP v. Fayette County*, the Fayette County, Georgia Commission and Board of Education adopted a settlement plan that I developed for the plaintiffs under a court-ordered mediation. The plan was signed into law by Governor Deal in March 2016.

Since 2011, I have served as a redistricting and demographic consultant to the Massachusetts-based Prison Policy Initiative and to Demos for a nationwide project to end

prison-based gerrymandering. I have analyzed proposed and adopted election plans in about 25 states as part of my work with these two organizations.

During the 2000s, I analyzed census data and prepared draft election plans involving about 300 local-level jurisdictions in 25 states. I produced these plans at the request of local citizens' groups, national organizations such as the NAACP and, in a few instances, by contract with local governments. Election plans I developed for two counties – Sussex County, Virginia and Webster County, Mississippi – were adopted and precleared in 2002 by the U.S. Department of Justice. A ward plan I prepared for the City of Grenada, Mississippi was precleared in August 2005. A county council plan I developed for Native American plaintiffs in a Section 2 lawsuit (*Blackmoon v. Charles Mix County*) was adopted by Charles Mix County, South Dakota in November 2005. A county supervisors' plan I produced for Bolivar County, Mississippi was precleared in January 2006. A plan I drafted for Latino plaintiffs in Bethlehem, Pennsylvania (*Pennsylvania Statewide Latino Coalition v. Bethlehem Area School District*) was adopted in March 2009. Plans I developed for minority plaintiffs in Columbus County, North Carolina and Cortez-Montezuma School District in Colorado were adopted in 2009.

In addition, during the post-2000 reapportionment process, I drafted proposed statewide legislative plans on behalf of clients in eight states – Florida, Montana, New Mexico, North Dakota, South Dakota, Tennessee, Virginia, and Wyoming. In August 2005, a federal court ordered the State of South Dakota to remedy a Section 2 voting rights violation and adopt a state legislative plan I developed (*Bone Shirt v. Hazeltine*).

From 1986 to 2016, I have prepared election plans for Section 2 litigation in Alabama, Connecticut, Florida, Georgia, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South

Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, and Wyoming.

I have testified at trial as an expert witness on redistricting and demographics in federal courts in the following voting rights cases (approximate most recent testimony dates are in parentheses). I filed declarations and was deposed in most of these cases.

Alabama

Alabama Legislative Black Caucus et al. v. Alabama et al. (2013)

Colorado

Cuthair v. Montezuma-Cortez School Board (1997)

Georgia

Cofield v. City of LaGrange (1996)

Love v. Deal (1995)

Askew v. City of Rome (1995)

Woodard v. Lumber City (1989)

Louisiana

Knight v. McKeithen (1994)

Reno v. Bossier Parish (1995)

Wilson v. Town of St. Francisville (1997)

Maryland

Cane v. Worcester County (1994)

Mississippi

Addy v Newton County (1995)

Boddie v. Cleveland (2003)

Boddie v. Cleveland School District (2010)

Ewing v. Monroe County (1995)

Fairley v. Hattiesburg (2014)

Fairley v. Hattiesburg (2008)

Jamison v. City of Tupelo (2006)

Gunn v. Chickasaw County (1995)

NAACP v. Fordice (1999)

Nichols v. Okolona (1995)

Smith v. Clark (1995)

Montana

Old Person v. Cooney (1998)

Old Person v. Brown (on remand) (2001)

Missouri

Missouri NAACP v. Ferguson-Florissant School District (2016)

Nebraska

Stabler v. Thurston County (1995)

New York

Arbor Hills Concerned Citizens v. Albany County (2003)

Pope v. County of Albany (2015)

South Carolina

Smith v. Beasley (1996)

South Dakota

Bone Shirt v. Hazeltine (2004)

Cottier v. City of Martin (2004)

Tennessee

Cousins v. McWherter (1994)

Rural West Tennessee African American Affairs Council v. McWherter (1993)

Virginia

Henderson v. Richmond County (1988)

McDaniel v. Mehfoud (1988)

White v. Daniel (1989)

Smith v. Brunswick County (1991)

Wyoming

Large v. Fremont County (2007)

In addition, I have filed declarations or been deposed in these cases:

Alabama

Voketz v. City of Decatur (2014)

Florida

Calvin v. Jefferson County (2016)

Thompson v. Glades County (2001)

Johnson v. DeSoto County (1999)

Burton v. City of Belle Glade (1997)

Georgia

Georgia State Conference NAACP, et al. v. Fayette County (2015)

Knighton v. Dougherty County (2002)

Johnson v. Miller (1998)

Jones v. Cook County (1993)

Kentucky

Herbert v. Kentucky State Board of Elections (2013)

Louisiana

Terrebonne Parish NAACP v. Jindal, et al. (2016)
NAACP v. St. Landry Parish Council (2005)
Rodney v. McKeithen (1993)
Prejean v. Foster (1998)

Maryland

Fletcher v. Lamone (2011)

Mississippi

Partee v. Coahoma County (2015)
Figgs v. Quitman County (2015)
West v. Natchez (2015)
Williams v. Bolivar County (2005)
Clark v. Calhoun County (on remand)(1993)
Houston v. Lafayette County (2002)
Wilson v. Clarksdale (1992)
Stanfield v. Lee County(1991)
Teague v. Attala County (on remand)(1993)

Montana

Alden v. Rosebud County (2000)

North Carolina

Lewis v. Alamance County (1991)
Gause v. Brunswick County (1992)
Webster v. Person County (1992)

Rhode Island

Davidson v. City of Cranston (2015)

South Carolina

Vander Linden v. Campbell (1996)

South Dakota

Emery v. Hunt (1999)
Kirkie v. Buffalo County (2004)

Tennessee

NAACP v. Frost, et al. (2003)

Utah

Navajo Nation v. San Juan County (2016)

Virginia

Moon v. Beyer (1990)

Washington
Montes v. City of Yakima (2014)

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each of the next two succeeding municipal general elections if three council positions normally would be filled at the first municipal general election after the population determination. The council shall by ordinance indicate which, if any, of the remaining positions shall be elected at large or from wards or districts.

(5) Vacancies on a council shall occur and shall be filled as provided in chapter 42.12 RCW.

RCW 29A.76.010

Counties, municipal corporations, and special purpose districts.

(1) It is the responsibility of each county, municipal corporation, and special purpose district with a governing body comprised of internal director, council, or commissioner districts not based on statutorily required land ownership criteria to periodically redistrict its governmental unit, based on population information from the most recent federal decennial census.

(2) Within forty-five days after receipt of federal decennial census information applicable to a specific local area, the commission established in RCW 44.05.030 shall forward the census information to each municipal corporation, county, and district charged with redistricting under this section.

(3) No later than eight months after its receipt of federal decennial census data, the governing body of the municipal corporation, county, or district shall prepare a plan for redistricting its internal or director districts.

(4) The plan shall be consistent with the following criteria:

(a) Each internal director, council, or commissioner district shall be as nearly equal in population as possible to each and every other such district comprising the municipal corporation, county, or special purpose district.

(b) Each district shall be as compact as possible.

(c) Each district shall consist of geographically contiguous area.

(d) Population data may not be used for purposes of favoring or disfavoring any racial group or political party.

(e) To the extent feasible and if not inconsistent with the basic enabling legislation for the municipal corporation, county, or district, the district boundaries shall coincide with existing recognized natural boundaries and shall, to the extent possible, preserve existing communities of related and mutual interest.

(5) During the adoption of its plan, the municipal corporation, county, or district shall ensure that full and reasonable public notice of its actions is provided. The municipal corporation, county, or district

shall hold at least one public hearing on the redistricting plan at least one week before adoption of the plan.

(6)(a) Any registered voter residing in an area affected by the redistricting plan may request review of the adopted local plan by the superior court of the county in which he or she resides, within fifteen days of the plan's adoption. Any request for review must specify the reason or reasons alleged why the local plan is not consistent with the applicable redistricting criteria. The municipal corporation, county, or district may be joined as respondent. The superior court shall thereupon review the challenged plan for compliance with the applicable redistricting criteria set out in subsection (4) of this section.

(b) If the superior court finds the plan to be consistent with the requirements of this section, the plan shall take effect immediately.

(c) If the superior court determines the plan does not meet the requirements of this section, in whole or in part, it shall remand the plan for further or corrective action within a specified and reasonable time period.

(d) If the superior court finds that any request for review is frivolous or has been filed solely for purposes of harassment or delay, it may impose appropriate sanctions on the party requesting review, including payment of attorneys' fees and costs to the respondent municipal corporation, county, or district.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry, no matter how small, should be recorded to ensure the integrity of the financial statements. This includes not only sales and purchases but also expenses, income, and transfers between accounts.

The second part of the document provides a detailed breakdown of the accounting cycle. It outlines the ten steps involved in the process, from identifying the accounting entity to preparing financial statements. Each step is explained in detail, with examples provided to illustrate the concepts.

The third part of the document focuses on the classification of accounts. It discusses the different types of accounts, such as assets, liabilities, equity, revenue, and expense accounts, and how they are used to record and summarize business transactions.

The fourth part of the document covers the process of journalizing and posting. It explains how transactions are recorded in the journal and then posted to the ledger accounts. This process is essential for maintaining the double-entry system and ensuring that the books are balanced.

The fifth part of the document discusses the preparation of financial statements. It outlines the steps involved in calculating the net income, preparing the income statement, balance sheet, and statement of owner's equity. It also discusses the importance of these statements for management and external stakeholders.

The sixth part of the document covers the closing process. It explains how the temporary accounts (revenue, expense, and owner's drawing) are closed to the permanent accounts (assets, liabilities, and equity) at the end of the accounting period. This process is necessary to reset the temporary accounts for the next period and to update the owner's equity account.

The seventh part of the document discusses the importance of adjusting entries. It explains how these entries are used to record accruals, deferrals, and other adjustments that are necessary to ensure that the financial statements are accurate and reflect the true financial position of the business.

The eighth part of the document covers the process of reconciling the bank statement. It explains how the company's cash account is compared to the bank's statement to identify any discrepancies and correct them. This process is essential for ensuring the accuracy of the cash balance and detecting any errors or fraud.

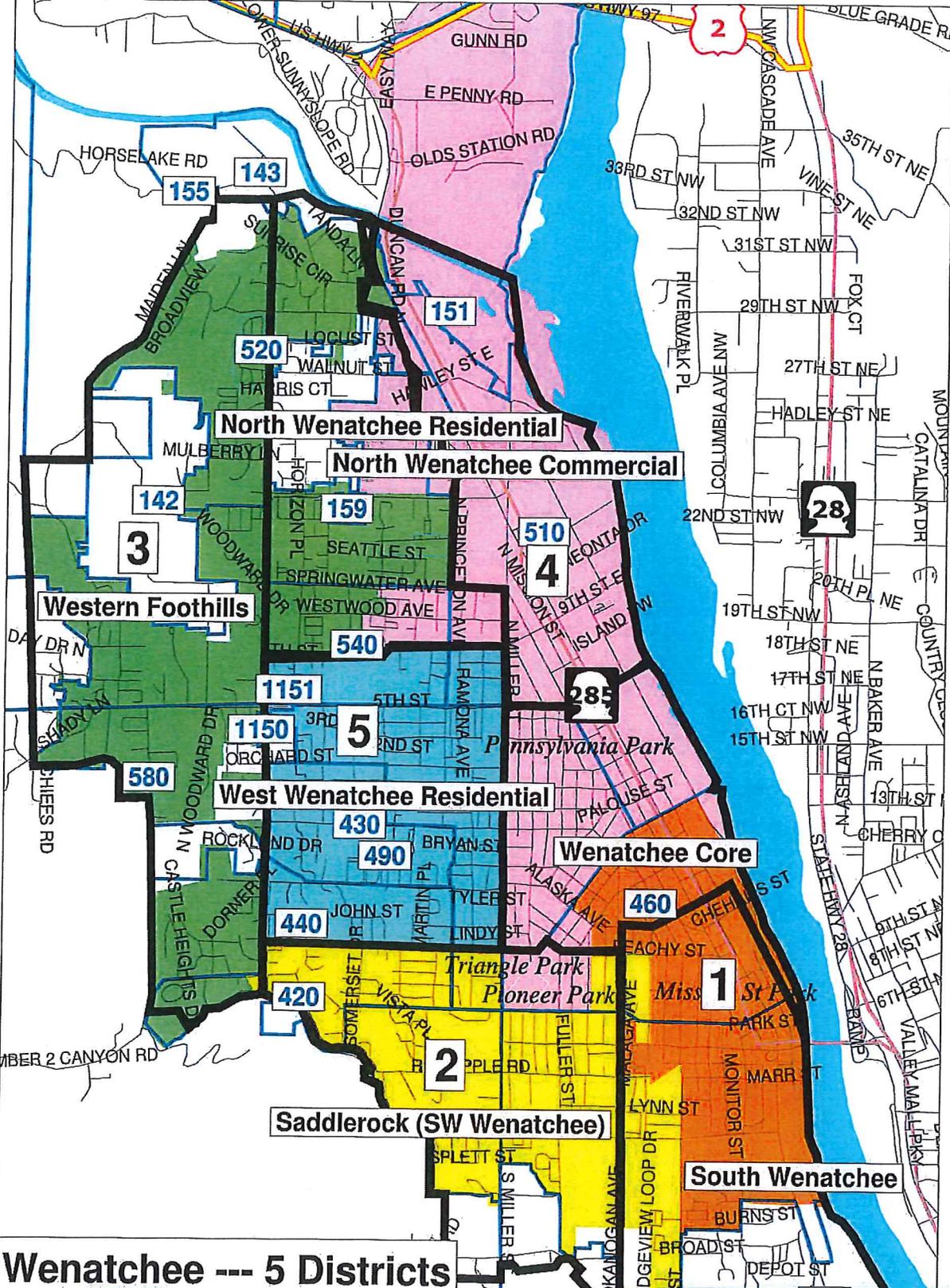
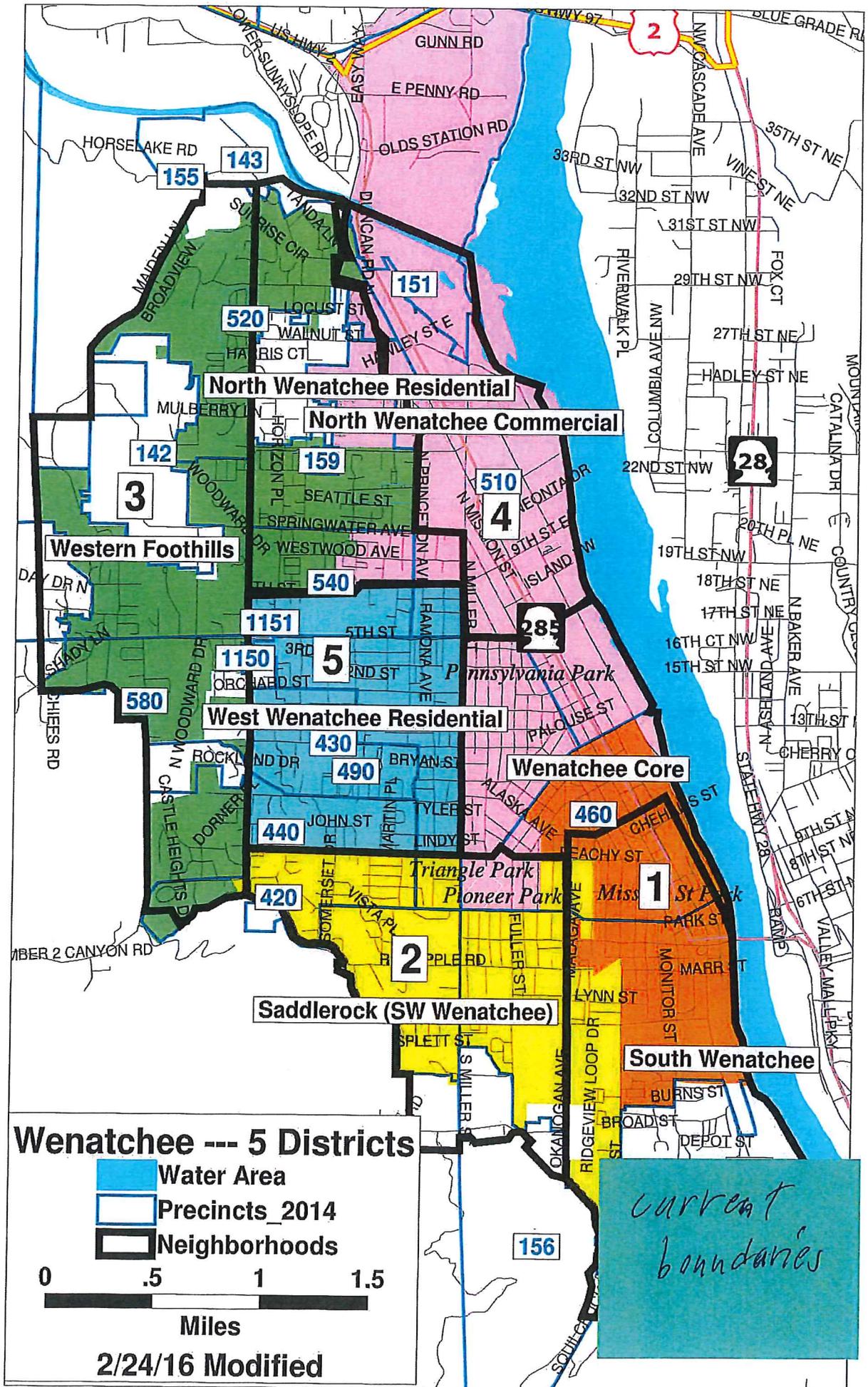
The ninth part of the document discusses the importance of internal controls. It outlines the various measures that can be implemented to prevent and detect errors and fraud, such as segregation of duties, authorization, and regular audits.

The tenth part of the document covers the final steps of the accounting process, including the preparation of the final financial statements and the closing of the books. It emphasizes the importance of accuracy and transparency in all aspects of the process.

Appendix 8

- Five-district maps and population summary reports
 - Current City boundaries
 - City boundaries including potential annexations

- Seven-district maps and population summary reports
 - Current City boundaries
 - City boundaries including potential annexations



Population Summary Report

Wenatchee City Council -- 5 Districts, 2 At-Large -- 2/24/2016 Modified

District	Population	Deviation	% Deviation	Latino	% Latino	NH Am. Indian	% NH Am. Indian	NH White	% NH White	Group Quartes Incarcerated	% Group Quartes Incarcerated
1	6164	-231	-3.61%	3876	62.88%	52	0.84%	2089	33.89%	0	0.00%
2	6349	-46	-0.72%	1705	26.85%	48	0.76%	4409	69.44%	0	0.00%
3	6668	273	4.27%	940	14.10%	32	0.48%	5442	81.61%	0	0.00%
4	6690	295	4.61%	1901	28.42%	76	1.14%	4445	66.44%	300	4.48%
5	6104	-291	-4.55%	977	16.01%	55	0.90%	4849	79.44%	0	0.00%
Total	31975			9399	29.39%	263	0.82%	21234	66.41%	300	0.94%

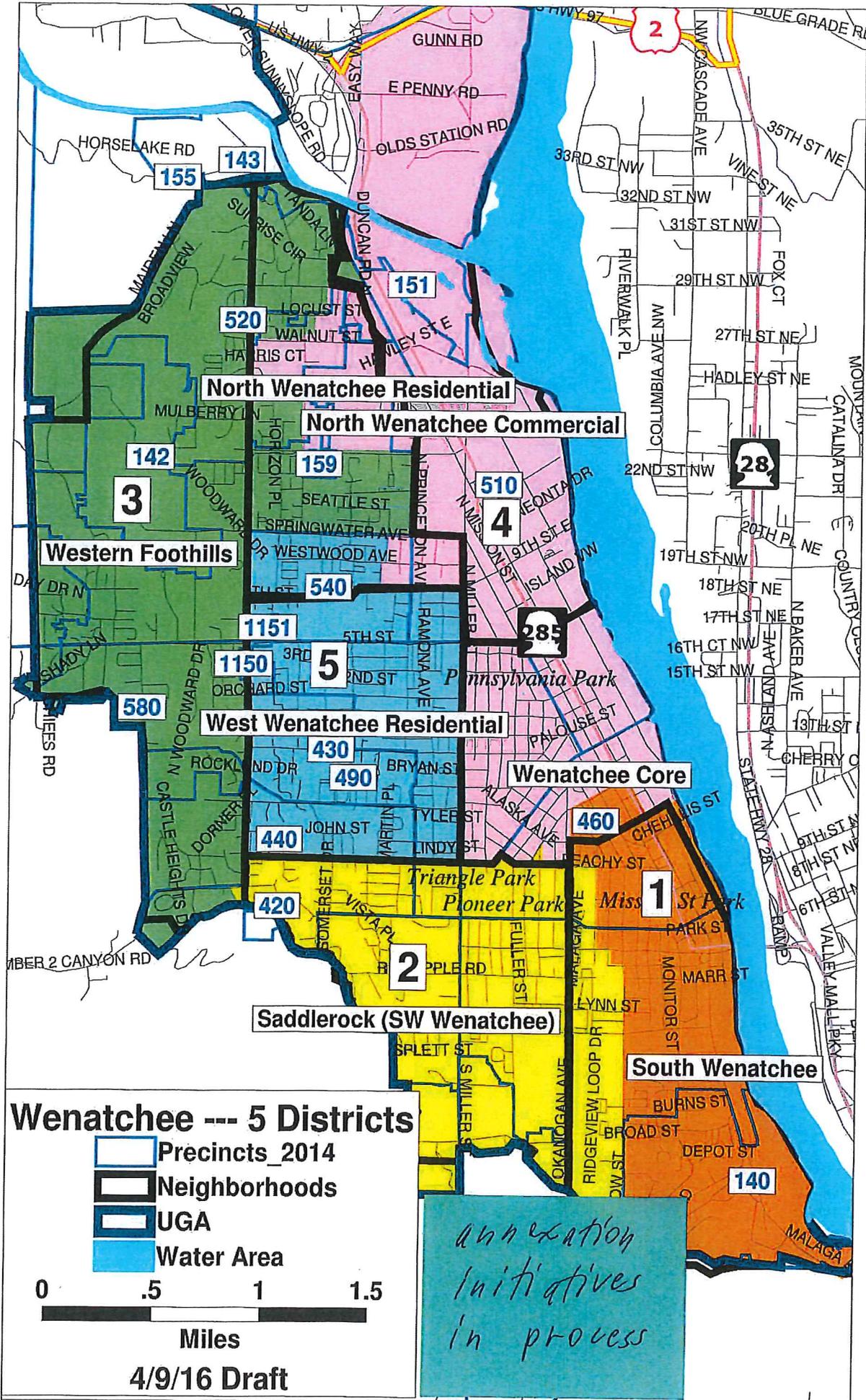
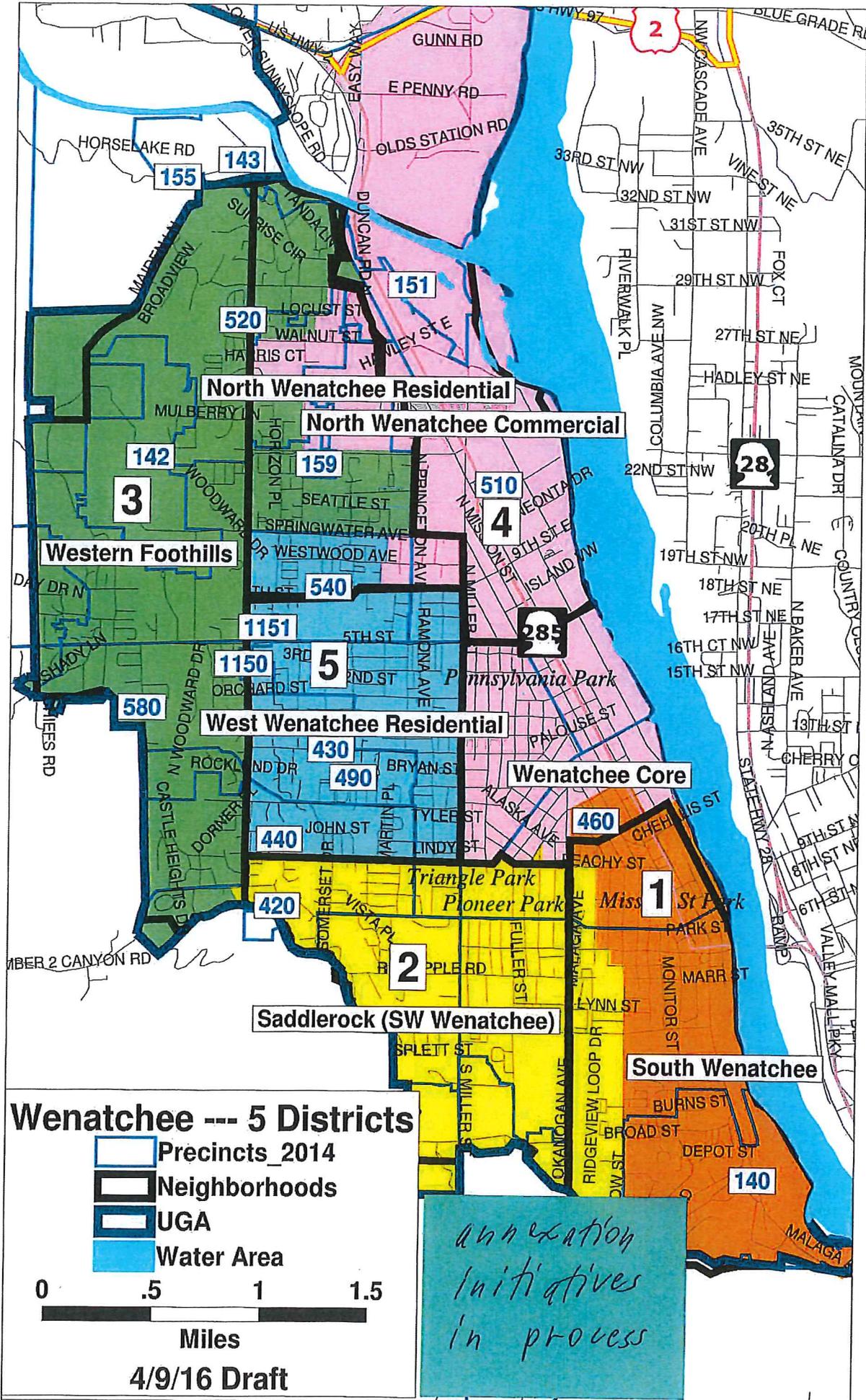
Ideal District Size= 6395
 Total Deviation 9.16%

District	18+_Pop	18+ Latino	% 18+ Latino	18+ NH Am. Indian	% 18+ NH Am. Indian	18+ NH White	% 18+ NH White	% Latino CVAP	% Latino Citizens (all ages)	% Latino Registered Voters (of all voters)
1	4089	2260	55.27%	42	1.03%	1679	41.06%	48.47%	62.40%	36.67%
2	4702	998	21.23%	38	0.81%	3555	75.61%	16.15%	21.52%	13.21%
3	5029	526	10.46%	25	0.50%	4336	86.22%	3.18%	11.73%	5.16%
4	5086	1192	23.44%	66	1.30%	3638	71.53%	14.19%	18.81%	12.15%
5	4711	557	11.82%	39	0.83%	3978	84.44%	9.72%	13.28%	7.64%
Total	23617	5533	23.43%	210	0.89%	17186	72.77%	16.36%	25.74%	11.95%

District #	CVAP	Registered Voters	% Registered of CVAP	Latino CVAP	Latino Registered Voters	% Latino Registered Voters Of LCVAP	Turnout 11/2015	% 2015 Turnout of CVAP	Turnout 11/2012** of 2015 voters	% 2012 Turnout of CVAP** of 2015 voters
1	3053	1620	53.05%	1480	594	40.13%	438	14.34%	823	30.47%
2	4267	3482	81.60%	689	460	66.74%	1485	34.80%	2332	54.35%
3	5160	4319	83.71%	164	223	NA	2260	43.80%	3163	61.29%
4	4102	2855	69.59%	582	347	59.62%	976	23.79%	1596	40.14%
5	4498	3628	80.66%	437	277	63.33%	1747	38.84%	2588	56.05%

Notes:

- (1) % LCVAP and % Latino Citizens calculated by disaggregating 2010-2014 ACS block group estimates (by age) for citizen Hispanics and Non-Hispanics to 2010 census blocks.
- (2) Registration and turnout rates calculated by geocoded addresses and Latino surname match. (A few voters are not assigned to districts due to geocoding/map projection issues)
- (3) ** 2012 turnout rates are under-reported due to differences between 2015 registered voters and unavailable 2012 historical registration data



Population Summary Report

Wenatchee City Council -- 4/9/2016 Draft (with potential annexation areas)

District	Population	Deviation	% Deviation	Latino	% Latino	NH Am. Indian	% NH Am. Indian	NH White	% NH White	Group Quarters Incarcerated	% Group Quarters Incarcerated
1	6720	-299	-4.26%	4451	66.24%	47	0.70%	2086	31.04%	0	0.00%
2	7011	-8	-0.11%	1953	27.86%	53	0.76%	4788	68.29%	0	0.00%
3	7123	104	1.48%	1023	14.36%	34	0.48%	5792	81.31%	0	0.00%
4	7145	126	1.80%	2093	29.29%	85	1.19%	4685	65.57%	300	4.20%
5	7094	75	1.07%	1099	15.49%	58	0.82%	5686	80.15%	0	0.00%
Total	35093			10619	30.26%	277	0.79%	23037	65.65%	300	0.85%

Ideal District Size= 7019
 Total Deviation 6.06%

District	18+_Pop	18+ Latino	% 18+ Latino	18+ NH Am. Indian	% 18+ NH Am. Indian	18+ NH White	% 18+ NH White	% Latino CVAP	% Latino Citizens (all ages)	% Latino Registered Voters (of all voters)
1	4381	2582	58.94%	38	0.87%	1664	37.98%	52.51%	63.74%	43.40%
2	5178	1134	21.90%	43	0.83%	3870	74.74%	16.73%	22.96%	13.42%
3	5390	578	10.72%	27	0.50%	4633	85.96%	3.51%	12.18%	5.05%
4	5438	1311	24.11%	74	1.36%	3857	70.93%	14.93%	20.11%	11.64%
5	5469	637	11.65%	42	0.77%	4630	84.66%	8.38%	11.48%	7.85%
Total	25856	6242	24.14%	224	0.87%	18654	72.15%	16.36%	25.74%	11.95%

Notes:

- (1) % LCVAP and % Latino Citizens calculated by disaggregating 2010-2014 ACS block group estimates (by age) for citizen Hispanics and Non-Hispanics to 2010 census blocks.
- (2) Registration rates calculated by geocoded addresses and Latino surname match, but does not include potential annexation areas.
- (3) Group quarters data are from the 2010 Advance Group Quarters File released by the Census Bureau on April 20, 2011

Population Summary Report

Wenatchee City Council -- 2/23/2016 Modified

District	Population	Deviation	% Deviation	Latino	% Latino	NH Am. Indian	% NH Am. Indian	NH White	% NH White	Group Quartes Incarcerated	% Group Quartes Incarcerated
1	4565	-3	-0.07%	3037	66.53%	29	0.64%	1408	30.84%	0	0.00%
2	4778	210	4.60%	1658	34.70%	39	0.82%	2946	61.66%	0	0.00%
3	4501	-67	-1.47%	1455	32.33%	57	1.27%	2806	62.34%	300	6.67%
4	4649	81	1.77%	1281	27.55%	39	0.84%	3148	67.71%	0	0.00%
5	4715	147	3.22%	414	8.78%	21	0.45%	4109	87.15%	0	0.00%
6	4389	-179	-3.92%	738	16.81%	44	1.00%	3436	78.29%	0	0.00%
7	4378	-190	-4.16%	816	18.64%	34	0.78%	3381	77.23%	0	0.00%
Total	31975			9399	29.39%	263	0.82%	21234	66.41%	300	0.94%

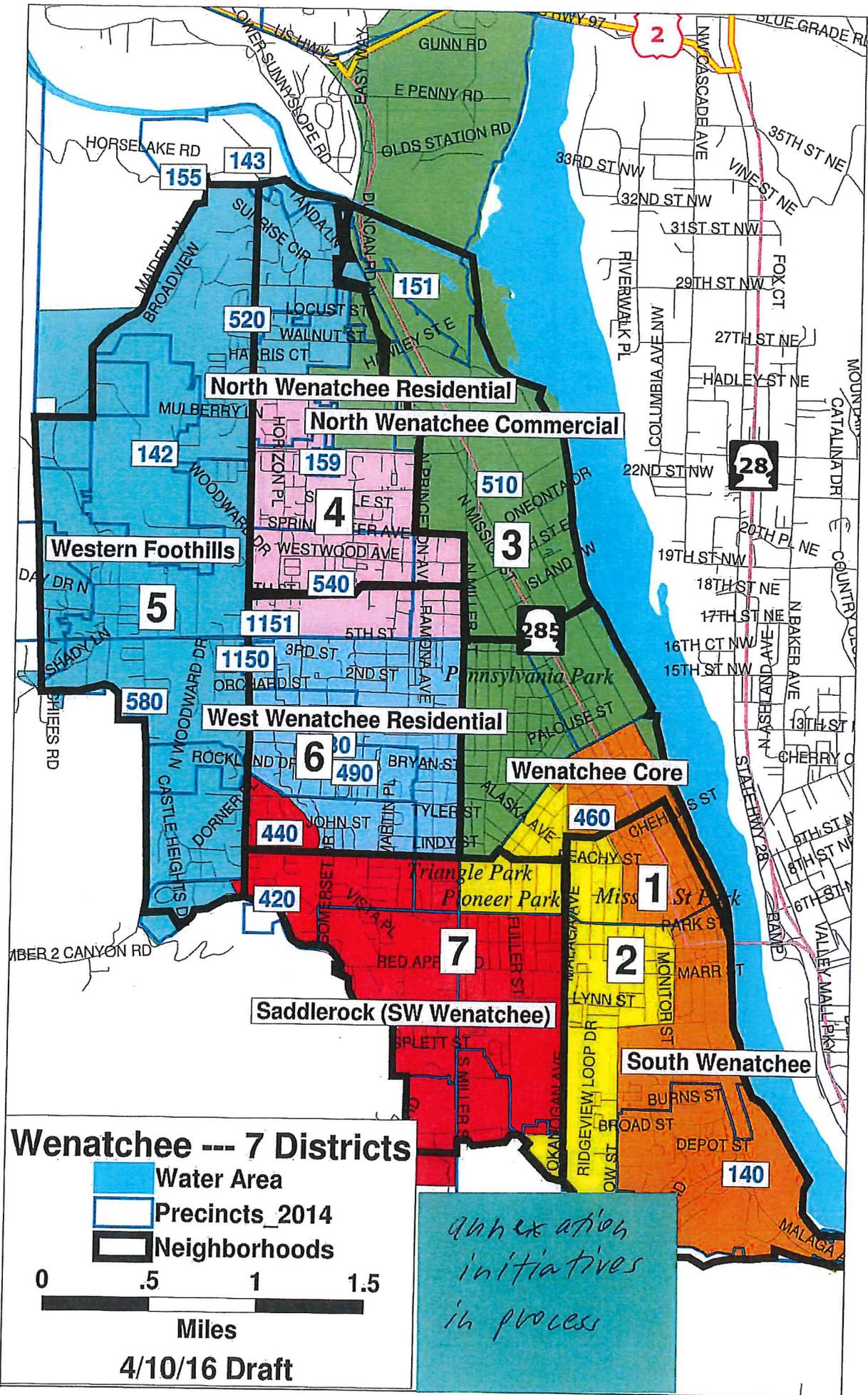
Ideal District Size= 4568
 Total Deviation 8.76%

District	18+_Pop	18+ Latino	% 18+ Latino	18+ NH Am. Indian	% 18+ NH Am. Indian	18+ NH White	% 18+ NH White	% Latino CVAP	% Latino Citizens (all ages)	% Latino Registered Voters (of all voters)
1	2979	1768	59.35%	22	0.74%	1120	37.60%	54.77%	66.89%	43.11%
2	3426	968	28.25%	33	0.96%	2336	68.18%	20.65%	29.31%	17.91%
3	3394	931	27.43%	52	1.53%	2286	67.35%	18.70%	24.15%	14.13%
4	3465	724	20.89%	30	0.87%	2588	74.69%	8.14%	20.68%	10.26%
5	3628	248	6.84%	17	0.47%	3270	90.13%	2.27%	6.23%	3.87%
6	3403	415	12.20%	30	0.88%	2853	83.84%	11.37%	15.99%	7.31%
7	3322	479	14.42%	26	0.78%	2733	82.27%	9.83%	12.86%	9.22%
Total	23617	5533	23.43%	210	0.89%	17186	72.77%	16.36%	25.74%	11.95%

District	CVAP	Registered Voters	% Registered of CVAP	Latino CVAP	Latino Registered Voters	% Latino Registered Voters Of LCVAP	Turnout 11/2015	% 2015 Turnout of CVAP	Turnout 11/2012** of 2015 voters	% 2012 Turnout of CVAP** of 2015 voters
1	2293	1009	44.01%	1256	435	34.64%	254	11.08%	496	21.63%
2	2897	2479	85.58%	598	444	74.24%	909	31.38%	1552	53.58%
3	2496	1734	69.47%	467	245	52.50%	605	24.24%	970	38.86%
4	3319	2144	64.59%	270	220	81.43%	766	23.08%	1233	37.15%
5	3694	3408	92.27%	84	132	NA	1893	51.25%	2591	70.15%
6	3323	2505	75.37%	378	183	48.43%	1209	36.38%	1781	53.59%
7	3059	2625	85.81%	301	242	80.46%	1270	41.51%	1879	61.42%

Notes:

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- (2) Registration and turnout rates calculated by geocoded addresses and Latino surname match. (A few voters are not assigned to districts due to geocoding/map projection issues)
- (3) ** 2012 turnout rates are under-reported due to differences between 2015 registered voters and unavailable 2012 historical registration data
- (4) Group quarters data are from the 2010 Advance Group Quarters File released by the Census Bureau on April 20, 2011



4/10

Population Summary Report

Wenatchee City Council -- 4/10/2016 Draft (with potential annexation areas)

District	Population	Deviation	% Deviation	Latino	% Latino	NH Am. Indian	% NH Am. Indian	NH White	% NH White	Group Quartes Incarcerated	% Group Quartes Incarcerated
1	4893	-120	-2.39%	3096	63.27%	29	0.59%	1638	33.48%	0	0.00%
2	5129	116	2.31%	2518	49.09%	54	1.05%	2430	47.38%	0	0.00%
3	5005	-8	-0.16%	1420	28.37%	62	1.24%	3306	66.05%	300	5.99%
4	4959	-54	-1.08%	1326	26.74%	39	0.79%	3428	69.13%	0	0.00%
5	5165	152	3.03%	460	8.91%	21	0.41%	4506	87.24%	0	0.00%
6	4853	-160	-3.19%	678	13.97%	37	0.76%	3949	81.37%	0	0.00%
7	5089	76	1.52%	1121	22.03%	35	0.69%	3780	74.28%	0	0.00%
Total	35093			10619	30.26%	277	0.79%	23037	65.65%	300	0.85%

Ideal District Size= 5013

Total Deviation 6.23%

District	18+_Pop	18+ Latino	% 18+ Latino	18+ NH Am. Indian	% 18+ NH Am. Indian	18+ NH White	% 18+ NH White	% Latino CVAP	% Latino Citizens (all ages)	% Latino Registered Voters (of all voters)
1	3242	1806	55.71%	27	0.83%	1322	40.78%	51.66%	60.56%	40.60%
2	3563	1469	41.23%	42	1.18%	1962	55.07%	30.53%	45.12%	23.43%
3	3860	908	23.52%	55	1.42%	2746	71.14%	14.04%	17.87%	11.62%
4	3671	734	19.99%	27	0.74%	2803	76.36%	7.97%	19.38%	11.35%
5	3950	288	7.29%	17	0.43%	3550	89.87%	2.47%	5.50%	3.63%
6	3743	389	10.39%	28	0.75%	3208	85.71%	9.93%	13.23%	6.69%
7	3827	648	16.93%	28	0.73%	3063	80.04%	13.43%	16.97%	10.95%
Total	25856	6242	24.14%	224	0.87%	18654	72.15%	16.36%	25.74%	11.95%

Notes:

- (1) % LCVAP and % Latino Citizens calculated by disaggregating 2010-2014 ACS block group estimates (by age) for citizen Hispanics and Non-Hispanics to 2010 census blocks.
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01/17

Appendix 9

- WEPC Civic Engagement Recommendation

Civic Engagement Recommendation Wenatchee Election Process Committee

“People will support what they help to create”

Overview:

We believe that the City of Wenatchee will be strengthened to the extent it can tap into the wisdom, energy and passion of more citizens in our community. There is not a strong history of engagement and involvement among Wenatchee citizens. We believe the city should take the lead in finding ways to create opportunities for meaningful engagement and citizens need to be encouraged to invest their time and energy in civic affairs.

Lack of engagement is not unique to the city but is a nationwide issue. We prefer that the city take this as a challenge and an opportunity to get creative.

This lack of engagement is an issue with all of our citizens, but there are particular challenges with involving Latinos and Millennials, two groups of significant size that should be meaningfully involved. There are cultural differences and social trends that make it challenging to connect meaningfully with these constituencies. The city has had some recent success in engaging Latino citizens in South Wenatchee, and this is a positive sign that taking steps to creatively engage core groups can work.

Recommendation 1: Develop a City Advisory Council

The City of Wenatchee should develop a diverse group of advisors to meet quarterly with key city leaders to provide feedback and suggestions about significant city issues. Such an advisory board would help create new, meaningful relationships with individuals and perhaps spark an interest by these individuals in getting more involved in city government. Chelan PUD used this approach to develop greater engagement.

Recommendation 2: Continue reaching out to the Latino community

A significant divide exists in our community between the Latino and Anglo communities. To build relationships with the Latino community, we encourage the city to continue to experiment with involving and engaging them. Their cultural values of community (“we” rather than “me”), emphasis on the family and faith can be a tremendous resource to help this community move forward together. It is important to note that the Latino community is not one monolithic constituency. In general, for cultural reasons, Latinos have tended to step back and not engage. Reaching out to involve them in finding solutions prior to developing city policies helps build trust and encourages engagement. The Diversity Advisory Council would be a good resource to continue outreach efforts to bring real people and not just the usual community leaders into community discussions. Creative engagement is a mindset and a philosophy that we would like to encourage the city to adopt.

Recommendation 3: Improve social media outreach

We recommend that the City of Wenatchee make better use of social media for gathering input and getting feedback. Millennials, like Latinos, are not one group, but they tend to operate much more on social media rather than through traditional media. We recommend experimenting with social media to get input and continue to cultivate relationships.

Recommendation 4: Assign council members to community groups

Council members are frequently tapped to sit on government-based task forces and boards. Building relationships with underrepresented parts of the community would be helpful to maintain a human connection. Consider having a council member assigned to education and visit the PTAs. Another could be assigned to social service agencies, CAFÉ, Wenatchee Valley College student leadership, etc.

Recommendation 5: Seek partnerships to build deeper ties to the community

There is a significant divide between the Latino and Anglo communities. Standard diversity efforts can be rather superficial. Consider working with the Community Foundation of North Central Washington, Wenatchee Valley College and other partners to facilitate deeper discussions. This was done effectively in Kalamazoo. Here's a link to that work.

<http://www.couragerenewal.org/newfound-courage-in-kalamazoos-latino-community/>

Recommendation 6: Consider developing a community engagement plan

A small advisory group could be helpful to the city in developing ongoing strategies to creatively engage the public.