

To: Washington State Redistricting Commission, Washington Supreme Court,
and all Washington Residents
From: UCLA Voting Rights Project
Re: Voting Rights Act compliance
Date: November 17, 2021



I. Introduction

On November 15, 2021, the Washington Redistricting Commission failed to meet its constitutional deadline and timely approve fair, compliant, and equitable redistricting plans for Washington’s legislative and congressional districts. While the Washington Redistricting Commission attempted to approve maps on November 16, 2021, after the constitutional deadline, the problems with the plans put forward by the Commission are far more than missed deadlines.

While drawing the new districts, the Redistricting Commission is required to comply with the Federal Voting Rights Act of 1965 which prohibits districting plans which dilute or weaken opportunities for representation for racial or ethnic minorities. Specifically, Section 2b of the 1965 VRA states that a plan is in violation if a minority group has “less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” See 52 USC 10301. It is this second clause of the VRA which directly relates to redistricting plans that decrease, crack, diminish or dilute, or retrogress the voting strength of racial or ethnic minorities – their ability to elect candidates of their choice.

In the Yakima region, the Washington's Redistricting Commission has failed to draw legislative redistricting plans that comply with the United States Constitution, the Federal Voting Rights Act (VRA), and Washington state law redistricting requirements. Put simply, **the VRA requires drawing a district which performs to elect minority candidates of choice** when the specific requirements of Section 2 are met as they are in the Yakima region. The U.S. Supreme Court has made this principle clear in *Abbott vs. Perez*, 138 S. Ct. 2305 (2018).

There are now three counties in the Yakima Valley which are majority-Latino based on population – Yakima, Franklin, and Adams, while Grant County nearby is close at 43% Latino. Further, within this region there are Latino communities of interest that report very consistent voting patterns and have populations well over 60%, 70%, and even 80% Latino. In the UCLA Voting Rights Project’s (VRP) review of census data and attempting to draw alternative maps which follow Washington state law and federal law, it is clear that a majority-Latino citizen voting-age population (CVAP) district can be drawn.

Latinos in the Yakima region have experienced a long history of discrimination. Already multiple voting rights lawsuits have been filed in this region and have been successful in arguing for local Latino-majority districts which perform for Latino candidates of choice. These facts are clear. Washington cannot adopt a map during the 2021-2022 redistricting that dilutes Latino voting strength. If such a map is adopted then the state can be subject to a Department of Justice

enforcement action or a civil suit by affected voters under the Federal Voting Rights Act, 14th Amendment, or 15th Amendment.

II. Demographic Information

Washington state's Latino population has surpassed 1 million in 2020. Washington now has the 12th largest Latino population out of the fifty states. According to the PL-94 Census data release, Washington State's population grew by 980,741 residents from 2010 to 2020, a growth rate of 14.5%. This growth was driven by a fast-growing Latino population, which grew at a rate 3.6 times greater than that of non-Latinos. Indeed, the Latino population grew by 303,423 for a growth rate of 40.1% compared to a growth rate of 11.3% for non-Latinos.

The growth of the Latino population has been especially large in the Yakima Valley and Tri-Cities region and is concentrated in that region. For example, Yakima County added more than 20,000 Latinos over the decade growing from 45% to 51% of the county population. =Franklin County added more than 12,000 Latinos over the decade and is now 54% Latino.

III. Legal Requirements

All redistricting plans for all jurisdictions must comply with the Federal Voting Rights Act (VRA). **Redistricting plans cannot decrease, crack, diminish or dilute, or retrogress the voting strength of racial or ethnic minorities' ability to elect candidates of their choice.** Specifically, Section 2b of the VRA states a violation has occurred if minority voters "have less opportunity than other members of the electorate to participate in the political process and *to elect representatives of their choice.*"

The U.S. Constitution and VRA prohibit a jurisdiction for engaging in either intentional destruction or actions that have the effect of diluting a minority performing district and cracking or packing voters on the basis of race that results in vote dilution. *See League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 403, 126 S. Ct. 2594, 2601, 165 L. Ed. 2d 609 (2006); *Luna v. County of Kern*, 291 F.Supp.3d 1088 (E.D. Cal. 2018); *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990).

This prohibition includes enactment of redistricting maps that split up or "crack" communities of interest in order to weaken the position of racial minorities with respect to their effective exercise of the electoral franchise. For example, In *LULAC*, 548 U.S. 440, the Supreme Court found that Section 2 of the Voting Rights Act was violated when Texas' implemented a redistricting plan that "took away the Latinos' opportunity [to elect candidates of choice] because Latinos were about to exercise it." Retrogression of a minority performing district means that a redistricting plan or voting practice "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Georgia v. Ashcroft*, 539 U.S. 461, 466 (2003).

When a racial, ethnic, or language minority group is sufficiently large in a political subdivision, that subdivision may be required to draw Section 2 compliant districts during the redistricting process. When determining whether to draw a Section 2 district, the political subdivision must

inquire as to (1) whether the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) if the minority group is political cohesive; and (3) that the majority group votes sufficiently as a bloc to cancel out or defeat the minority's preferred candidate. *Thornburg v. Gingles*, 478 U.S. 30 (1986). The latter two questions are called the "racially polarized voting" analysis.

Courts also require a performance analysis to assess whether or not proposed districts remedy the harm of vote dilution. Simply put, it is not enough to draw a district which *only* meets *Gingles* I standard of 50.1% minority CVAP, it must also be shown that the district will perform to elect minority candidates of choice. In *Abbott v. Perez*, 138 S. Ct. 2305 (2018), the Supreme Court stated that non-performing majority-Latino districts do not satisfy Section 2 of the VRA. Specifically, the Court wrote, "Under *Gingles*, the ultimate question is whether a districting decision dilutes the votes of minority voters, see *LULAC*, *supra*, at 425–426, 126 S.Ct. 2594 and it is hard to see how this standard could be met if the alternative to the districting decision at issue would not enhance the ability of minority voters to elect the candidates of their choice." *Id.* at 2332, (2018).

The proposed district must remedy vote dilution and provide the protected minority group a reasonable opportunity to elect candidates of their choice. Such opportunity is demonstrated utilizing past reconstituted election results tallied for the proposed district. We are confident that there are ways to draw a Latino opportunity district that meets the *Gingles* 1 standard and is also shown to perform for Latino preferred candidates.

IV. Section 2 Legal Analysis – Racially Polarized Voting

Given that it is possible to create a majority-Latino district, we next considered voting patterns by race as part of the second and third *Gingles* prongs. Without a doubt, racially polarized voting is present between Latino and White voters in the Yakima Valley region.

This analysis was undertaken by UCLA VRP Faculty Director, Dr. Matt Barreto and was [presented to the Washington State Redistricting Commission](#). Multiple news articles in Washington state were written about the analysis and [quoted Dr. Barreto](#) stating that there was a clear finding of racially polarized voting and his research presentation has [been publicly available](#) for over 3 weeks before the November 15 deadline. Dr. Barreto and his methods have been accepted and relied upon by state and federal courts throughout the country.

In his report, Dr. Barreto examined candidate elections from 2012 to 2020 for offices that were consistent across a 5-county region of Yakima, Benton, Grant, Franklin, and Adams. Contests included the President, U.S. Senate, U.S. House, Governor, Attorney General in each relevant year. Across the board, a clear pattern emerges in more than a dozen elections, where Latino voters in this region are cohesive and are trying to elect candidates of their choice, at margins of 2-to-1 or even 3-to-1, well above the bar for what courts have relied on in finding cohesiveness. In contrast, White voters in the Yakima region vote heavily against Latino candidate interests by almost the exact inverse relationship and serve to block Latino interest from ever winning in this

region. In many examples, while Latinos vote close to 75-25 in favor of Democrats, Whites vote 75-25 in favor of Republicans, in complete opposite voting blocs.

It is important to note that a Federal Court has already determined the existence of racially polarized voting in the Yakima region and ordered, in 2014, the City of Yakima to create majority-Latino districts for City Council. Likewise, in the first ever lawsuit filed under the Washington Voting Rights Act (WVRA) plaintiffs alleged racially polarized voting and vote dilution across Yakima County as a whole, and the parties agreed and a state court accepted a settlement, leading to the creation of majority-Latino districts. There have also been voting rights findings of racially polarized voting in Pasco, WA and Franklin County as a whole. Thus, these findings are consistent with what is already known about voting patterns by race and ethnicity in the Yakima Valley region.

In the news story noted above, Democratic Commissioner Brady Walkinshaw stated: “I think for me, as the first ever Latino commissioner, it has been extremely important for me to lift up and elevate Hispanic voters, and undo patterns of racially polarized voting, particularly in the Yakima Valley. This is something that, under federal law, has to be done.”

The Redistricting Commission has known this information since at least October 2021 and multiple versions of VRA-compliant maps were presented to the Commission. Although not all of the deliberations have been public, there appear serious procedural deviations in how the Commission undertook its work. It may well be that a Court would conclude that the failure to draw a Latino opportunity district around Yakima was an act of intentional discrimination.

V. Adherence to Washington State Redistricting Principals Set Out in RCW 44.05.090

In addition to the requirements of the Federal Voting Rights Act, it is important to note that redistricting plans in Washington State must adhere to state requirements, as set out in RCW 44.05.090. These requirements are as follows:

- (a) District lines should be drawn so as to coincide with the boundaries of local political subdivisions and areas recognized as communities of interest. The number of counties and municipalities divided among more than one district should be as small as possible;
- (b) Districts should be composed of convenient, contiguous, and compact territory. Land areas may be deemed contiguous if they share a common land border or are connected by a ferry, highway, bridge, or tunnel. Areas separated by geographical boundaries or artificial barriers that prevent transportation within a district should not be deemed contiguous; and
- (c) Whenever practicable, a precinct shall be wholly within a single legislative district.

Id. The maps that have been proposed by the Redistricting Commission fail to follow subsection (a), as the Latino population in the Yakima Valley region are a community of interest that is required to be respected for the purposes of redistricting. Aside from race and ethnicity, Latinos in this region are a community of interest due to shared policy concerns and shared

characteristics of language access needs, education and healthcare obtainment, and employment in the agricultural-related sectors.

The proposed Commission map includes numerous city-splits that are not necessary to achieve population balance and appear to be attempts to keep the Latino population too small to have meaningful political influence. The Commission's failure to adhere to both VRA guidelines and guidelines set forth in state law are concerning departures from the norm.

VI. Analysis of Different Maps

The proposed map which the Redistricting Commission [published to their website](#) on November 16, 2021, does not create a VRA compliant district in the Yakima region. First, it creates a Latino majority-district by the narrowest of margins, at 50.02% Latino. Second, the map cracks minority populations. It excludes the Yakima Reservation in Yakima County, which has a long history of voting in coalition with Latino interests and also excludes majority-Latino areas such as Wapato, Toppenish and Mabton cracking the Native American and Latino population unnecessarily. And third, it includes large pockets of rural voting precincts which are heavily White and vote against Latino candidates of choice. Indeed, in the analysis of the map on the [redistricting website](#) it has been uploaded to reports the map to suggest this LD-15 proposal is majority-Republican. It appears this district was drawn to give it the appearance of being a VRA compliant district, by hitting the 50% Latino threshold but was crafted in such a way to ensure it would not elect Latino candidates of choice. Such an illegal strategy to *appear* in compliance with the VRA is not new. *See e.g., Perez v. Abbott*, 250 F. Supp.3d 123 (W.D. Tex. April 20, 2017).

Researchers at the VRP have analyzed several other statewide elections through the boundaries of this proposed LD-15 and concluded that it will consistently vote against Latino candidates of choice. Most notably perhaps is that this proposed district would have given majority support to Bruce Danielson over Steve Gonzalez in the 2012 Supreme Court contest.

In contrast, the proposed map the Redistricting Justice Coalition in the Yakima region meets all standards of the VRA and would perform for Latino candidates of choice. This map ([found here](#)), joins communities of interest from Yakima, Union Gap, Wapato, Toppenish, Granger, Sunnyside, Grandview, and Pasco. It also includes the entire Yakima Reservation and results in a Latino CVAP of 52.05% and total minority CVAP of 62.6% with the addition of a large Native American population. [Redistricting analysis](#) concludes that this legislative district would consistently perform for Latino candidates of choice and remedy vote dilution.

VII. Conclusion

The data clearly show that Washington state can and should create a VRA-compliant map that creates an opportunity for Latinos to elect candidates of their choice. Our initial review of the November 16, 2021 Commission map suggests that while much of the map is satisfactory, there is a clear vote dilution claim in the Yakima region. A VRA-compliant map will not result in

“redrawing” the entire Commission map, but rather focusing on the Yakima region, it will provide a remedial solution to the racially polarized voting patterns that currently block Latinos from seeing their preferred candidates *ever* elected to the state legislature.