

The Hon. Thomas O. Rice

Sarah A. Dunne, WSBA No. 34869
La Rond Baker, WSBA No. 43610
AMERICAN CIVIL LIBERTIES UNION
OF WASHINGTON FOUNDATION
901 Fifth Avenue, Suite 630
Seattle, Washington 98164
Telephone: (206) 624-2184
Email: Dunne@aclu-wa.org
LBaker@aclu-wa.org

Kevin J. Hamilton, WSBA No.15648
Abha Khanna, WSBA No. 42612
William Stafford, WSBA No. 39849
Perkins Coie LLP
1201 Third Avenue, Ste. 4900
Seattle, WA 98101-3099
Telephone: (206) 359-8000
Email: KHamilton@perkinscoie.com
AKhanna@perkinscoie.com
WStafford@perkinscoie.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROGELIO MONTES and MATEO
ARTEAGA,

Plaintiffs,

v.

CITY OF YAKIMA, MICAH
CAWLEY, in his official capacity as
Mayor of Yakima, and MAUREEN
ADKISON, SARA BRISTOL,
KATHY COFFEY, RICK ENSEY,
DAVE Ettl, and BILL LOVER, in
their official capacity as members of
the Yakima City Council,

Defendants.

NO. 12-CV-3108 TOR

**PLAINTIFFS' RESPONSES AND
OBJECTIONS TO DEFENDANTS'
STATEMENT OF MATERIAL
FACTS**

NOTED FOR HEARING: August 18,
2014

Telephonic Argument
August 18, 2014 - 9:00 a.m.
Call in number: (888) 273-3658
Access Code: 2982935
Security Code: 3018

PLAINTIFFS' RESPONSE TO
DEFENDANTS' STATEMENT OF
MATERIAL FACTS – 1

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1
2
3 Pursuant to Local Rule 56.1(b), Plaintiffs submit these Responses and
4 Objections to Defendants' Statement of Material Facts. Plaintiffs' specific
5 disputes with, clarifications of, and objections to Defendants' Statement of
6 Material Facts are included in each of the numbered paragraphs below. As a
7
8 general matter, and as set forth fully in Plaintiffs' Response to Defendants'
9
10 Summary Judgment Motion, Plaintiffs contend that, even if all of the facts alleged
11
12 in Defendants' Statement of Material Facts were taken as true, Defendants'
13
14 Summary Judgment Motion (ECF No. 67) rests on an uncognizable legal theory
15
16 and therefore fails as a matter of law.
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 **A. Yakima’s Current Election System**

2 1. The Yakima City Council is composed of seven Councilmembers.
3 (Declaration of John A. Safarli (“Safarli Decl.”), Exhibit A [Charter of the City of
4 Yakima effective August 20, 2013] at 3.)
5
6

7 **RESPONSE:**

8 Undisputed.
9

10
11
12
13
14 2. Three Councilmembers are elected from the City at-large, without
15 regard to residence in any particular area of the City. (*Id.* at 3-4.) These
16 Councilmembers are chosen at-large in both the primary and general elections.
17
18
19
20
21 (*Id.*)

22 **RESPONSE:**

23 Undisputed.
24
25
26
27

28
29 3. The remaining four seats on the Council are assigned to one of four
30 districts. The Councilmember running for one of these seats must reside within that
31 district. (*Id.*)
32

33 **RESPONSE:**

34 Undisputed. Plaintiffs further clarify Defendants’ Fact #3 by noting that the
35 Yakima City Charter requires that the four primary districts be “as nearly equal in
36 population as practicable.” (*Id.*)
37
38
39
40
41

42
43
44 4. In the primary election, only voters residing within a district cast votes
45 for candidates who also live within the district. (*Id.* at 4.)
46
47

1 **RESPONSE:**

2 Undisputed.

3
4
5
6 5. The names of up to two candidates from each district who received
7 the most votes then appear on a citywide general ballot. (*Id.*) This method was
8 adopted through a City charter amendment approved by City voters in November
9 1976. (Safarli Decl., Ex. B [Charter amendment signed December 6, 1976] at 1- 3.)

10 **RESPONSE:**

11 Undisputed.

12
13
14
15 **B. The Instant Action**

16 6. Plaintiffs filed this action in August 2012 against the City and the
17 Councilmembers who were serving on the City Council at the time of filing. (ECF
18 No. 1.)

19 **RESPONSE:**

20 Undisputed.

21
22 7. Plaintiffs alleged that the City’s method of electing Council members
23 violated Section 2 because it “impermissibly dilutes the Latino vote, [and] does not
24 allow for equal participation by Latinos in the political process.” (*Id.*)

25 **RESPONSE:**

26 It is undisputed that, among other allegations set out in Plaintiffs’
27 Complaint, Plaintiffs allege that the City’s method of electing Council members
28 violates Section 2 of the Voting Rights Act because it “impermissibly dilutes the
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 Latino vote, [and] does not allow for equal participation by Latinos in the political
2 process.”
3

4 Plaintiffs object to Defendants’ Fact #7 on the grounds that Plaintiffs’
5 Complaint speaks for itself.
6
7

8
9
10 8. Plaintiffs also claimed that the first *Gingles* factor could be satisfied
11 because the “Latino community in the City of Yakima is sufficiently numerous and
12 geographically compact such that one or more properly apportioned single-member
13 electoral districts can be drawn in which Latinos would constitute an effective
14 majority of eligible voters.” (*Id.* at 8.)
15
16
17
18
19

20 **RESPONSE:**
21

22 It is undisputed that, among other allegations set out in Plaintiffs’
23 Complaint, Plaintiffs allege that Plaintiffs can satisfy the first *Gingles* factor
24 because the “Latino community in the City of Yakima is sufficiently numerous and
25 geographically compact such that one or more properly apportioned single-member
26 electoral districts can be drawn in which Latinos would constitute an effective
27 majority of eligible voters.”
28
29
30
31
32
33

34 Plaintiffs object to Defendants’ Fact #8 on the grounds that Plaintiffs’
35 Complaint speaks for itself.
36
37
38
39

40
41 9. Defendants responded by denying Plaintiffs’ allegations. (ECF No.
42 18.)
43

44 **RESPONSE:**
45
46
47

1 It is undisputed that Defendants denied the specific allegations referenced in
2 Defendants' Facts #7 and #8.
3

4 Plaintiffs object to Defendants' Fact #9 on the grounds that Defendants'
5 Answer speaks for itself.
6
7
8

9
10
11 10. Defendants also raised the affirmative defense that "[t]he relief sought
12 by Plaintiffs impermissibly departs from the one-person, one-vote principle in
13 violation of the Fourteenth Amendment to the United States Constitution." (*Id.* at
14 8.)
15
16
17

18 **RESPONSE:**
19

20 It is undisputed that Affirmative Defense D in Defendants' Answer contains
21 the language quoted in Defendants' Fact #10.
22
23

24 Plaintiffs object to Defendants' Fact #10 on the grounds that Defendants'
25 Answer speaks for itself.
26
27
28

29
30
31 11. Defendants also pled that Plaintiffs' complaint was "barred by the
32 affirmative defense of illegality." (*Id.* at 9.) In particular, Defendants alleged that
33 Plaintiffs' complaint "violate[d] Section 2 of the Voting Rights Act's prohibition
34 against voting schemes designed to effect racially proportional representation."¹
35
36
37
38
39 (*Id.*)
40

41
42
43 ¹ In Defendants' Summary Judgment Motion, Defendants contend that Plaintiffs'
44 case also violates Section 2's prohibition on vote dilution. Although this argument
45 is a variation of the general illegality defense that was pled in Defendants' answer,
46
47

RESPONSE:

It is undisputed that Affirmative Defense F in Defendants' Answer contains the language quoted in Defendants' Fact #11.

Plaintiffs object to Defendants' Fact #11 on the grounds that Defendants' Answer speaks for itself.

C. Mr. Cooper's First Expert Report

12. To establish the first *Gingles* factor, Plaintiffs retained William S. Cooper, an expert witness with experience in demographics and redistricting. (Safarli Decl., Ex. C [Declaration of William Cooper] at 1-2.)

RESPONSE:

It is undisputed that Mr. Cooper is an expert in demographics and redistricting and that Plaintiffs have retained Mr. Cooper as an expert witness.

Plaintiffs object to Defendants' Fact #12 on the grounds that the report attached as Exhibit C to the Safarli Declaration speaks for itself.

Defendants intend to file a stipulated motion that amends their answer to specifically allege that Plaintiffs' complaint "violates Section 2 of the Voting Right Act's prohibition against voting schemes designed to effect racially proportional representation *and Section 2 of the Voting Right Act's prohibition against vote dilution*" (additional language emphasized). Pursuant to Fed. R. Civ. P. 15(a)(2), Plaintiffs have consented to this limited amendment and a motion is forthcoming.

1 13. Mr. Cooper opined that the first *Gingles* factor could be met because
2
3 “it is possible to create two out of seven City Council districts where Latinos of
4 voting age would be a majority and where Latino registered voters would
5 compromise a majority of registered voters.” (*Id.* at 2.)
6
7

8
9 **RESPONSE:**

10 It is undisputed that Mr. Cooper opined that the first *Gingles* factor could be
11 met and that the language quoted in Defendants’ Fact #13 appears in Mr. Cooper’s
12 first expert report.
13
14

15 Plaintiffs object to Defendants’ Fact #13 on the grounds that the report
16 attached as Exhibit C to the Safarli Declaration speaks for itself.
17
18
19
20

21
22 14. To support his opinion, Mr. Cooper’s report presented two
23 hypothetical redistricting plans, Illustrative Plans 1 and 2. (*Id.* at 22-25.)
24
25

26
27 **RESPONSE:**

28 It is undisputed that Mr. Cooper presented two demonstrative redistricting
29 plans, entitled Illustrative Plans 1 and 2, in his first report.
30
31
32

33
34 15. Both plans divided the City into seven, single-member districts. (*Id.* at
35 23, 25.)
36
37

38
39 **RESPONSE:**

40 It is undisputed that Mr. Cooper’s Illustrative Plans 1 and 2 divided the City
41 into seven, single-member districts.
42
43

44 Plaintiffs object to Defendants’ Fact #15 on the grounds that the report
45 attached as Exhibit C to the Safarli Declaration speaks for itself.
46
47

1
2
3 16. Mr. Cooper's expert report listed the population for each district. His
4 report also contained the percentage of each district's Latino citizen, voting-age
5 population ("LCVAP").
6
7

8
9 **RESPONSE:**

10 It is undisputed that Mr. Cooper's first expert report listed both the
11 population as well as the LCVAP of each demonstrative district. Plaintiffs clarify
12 that Mr. Cooper listed additional information regarding each illustrative plan (and
13 the districts contained therein) in his first expert report.
14
15
16
17

18 Plaintiffs object to Defendants' Fact #16 on the grounds that the report
19 attached as Exhibit C to the Safarli Declaration speaks for itself.
20
21
22
23

24
25 17. Each illustrative plan contained one majority-minority district. (*Id.*)
26 The majority-minority district in Illustrative Plan 1 has a LCVAP of 50.25%.
27 Illustrative Plan 2's majority-minority district has a LCVAP of 50.13%. Mr.
28 Cooper noted that "[a] significant segment of the Latino population in Yakima is
29 non-citizen." (*Id.* at 11.) He also cited estimates from the U.S. Census Bureau
30 showing that slightly less than half of Latino adults in Yakima are non-citizens.
31
32
33
34
35
36
37 (*Id.*)

38
39 **RESPONSE:**

40 It is undisputed that each illustrative plan presented in Mr. Cooper's initial
41 report contained one majority-minority district based on LCVAP and that
42 Defendants' Fact #17 accurately reports the LCVAP figures presented in Mr.
43 Cooper's first report. Plaintiffs further clarify Defendants' Fact #17 by noting that
44
45
46
47

1 each illustrative plan presented in Mr. Cooper's initial report contained two
2 majority-minority districts based on the percentage of Latino registered voters. It
3 is also undisputed that the language quoted in Defendants' Fact #17 appears in Mr.
4 Cooper's first expert report and that Mr. Cooper's first expert report cites estimates
5 from the U.S. Census Bureau. Defendants' Fact #17, however, does not
6 completely or accurately describe the estimates obtained from the U.S. Census
7 Bureau. Plaintiffs clarify that Mr. Cooper's first report provides that 46.78% of
8 Hispanics over the age of 18 in Yakima are non-citizens. Plaintiffs further clarify
9 that Mr. Cooper subsequently provided updated estimates from the U.S. Census
10 Bureau indicating that the number of Hispanics over the age of 18 in Yakima who
11 are not citizens is actually 45.47%. ECF No. 66 at 130-31 (Declaration of Abha
12 Khanna In Support of Pls.' Mot. for Summ. J., Ex. 5 at 2-3 (July 1, 2014)).
13
14
15
16
17
18
19
20
21
22
23

24
25 Plaintiffs object to Defendants' Fact #15 on the grounds that the report
26 attached as Exhibit C to the Safarli Declaration speaks for itself.
27
28
29

30
31 18. Through subsequent communications with Plaintiffs' counsel,
32 Defendants obtained the absolute number of Latino and non-Latino voting-age
33 citizens in each district. (Safarli Decl., Ex. D [letter of Plaintiffs' counsel Ben
34 Stafford dated February 21, 2013] at 3.)
35
36
37

38
39 **RESPONSE:**

40
41 It is undisputed that Defendants' counsel communicated with Plaintiffs'
42 counsel subsequent to receiving Mr. Cooper's first report and that Plaintiffs'
43 counsel provided data on the absolute number of Latino and non-Latino voting age
44 citizens in each district as a result. Plaintiffs clarify that, prior to this
45
46
47

1 communication, Defendants had in their possession all of the necessary data and
2 information to calculate these numbers and that Plaintiffs provided the data as a
3 courtesy and in an attempt to avoid an unnecessary discovery dispute.
4
5

6 Plaintiffs object to Defendants' Fact #18 as hearsay.
7
8
9

10 19. The following tables contain the aggregate data for Mr. Cooper's
11 Illustrative Plans 1 and 2. The figures for each district's total population, Latino
12 eligible voter population, and non-Latino eligible voter population were provided
13 by Mr. Cooper or Plaintiffs' counsel. The other columns of data were calculated by
14 Defendants' counsel.
15
16
17
18
19

20 **RESPONSE:**
21

22 Plaintiffs clarify that, contrary to the tables listed in Defendants' Fact #19,
23 the column labeled "Ratio of CVAP to pop." should read "Ratio of Pop. to CVAP."
24 Plaintiffs further clarify that, without waiving their objections below, Plaintiffs'
25 calculations indicate that District 4 in the table entitled "Illustrative Plan 1" has a
26 deviation of CVAP from the mean of -1.91%, not -2.9%, and that District 6 in the
27 table entitled "Illustrative Plan 2" has a non-Latino CVAP of 8532.28, not 8523.28.
28 Plaintiffs further clarify that the latter transposition throws off several figures in
29 the table entitled "Illustrative Plan 2" and changes the overall deviation from 63.44
30 to 63.43.
31
32
33
34
35
36
37
38
39

40 Plaintiffs object to Defendants' Fact #19 on the grounds that the documents
41 attached as Exhibits C and D to the Safarli Declaration speak for themselves.
42 Plaintiffs' further objection to Defendants' Fact #19 and the tables contained
43 therein: hearsay; lack of foundation; not supported by a cited exhibit.
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

Illustrative Plan 1

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean ²
1	12533	35.21%	4414.08	2217.91	2196.17	50.25%	2.84	-43.02%
2	13358	39.18%	5233.29	2258.08	2975.21	43.15%	2.55	-32.45%
3	12859	70.44%	9058.30	2144.56	6913.74	23.68%	1.42	+16.92%
4	13175	57.68%	7599.76	2018.64	5581.12	26.56%	1.73	-2.90%
5	12683	70.62%	8956.33	1099.23	7857.10	12.27%	1.42	+15.60%
6	13176	72.18%	9511.15	677.69	8833.46	7.13%	1.39	+22.76%
7	13283	71.23%	9460.91	1338.07	8122.84	14.14%	1.40	+22.11%
Total	91067	n/a	54233.82	11,754.18	42479.64	n/a	n/a	65.78% ³³

21
22
23
24
25
26
27
28
29
30
31
32

Illustrative Plan 2

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	12969	35.06%	4546.63	2279.36	2267.27	50.13%	2.85	-41.31%
2	12822	39.76%	5097.51	2172.07	2925.44	42.61%	2.52	-34.19%
3	13079	70.21%	9183.10	2171.92	7011.18	23.65%	1.42	+18.55%
4	13431	57.40%	7709.31	2063.73	5645.58	26.77%	1.74	-0.47%
5	12761	70.77%	9030.36	1055.32	7975.04	11.69%	1.41	+16.57%

33
34
35
36
37
38
39
40
41
42

² The percentage deviation from the mean is calculated by (1) determining the average CVAP for each district (*e.g.*, 54224.82 divided by 7, or 7747.69); (2) dividing Mr. Cooper's CVAP figure for that district by the average CVAP figure (*e.g.*, 4414.08 divided by 7747.69, or 0.57); and (3) subtracting 1 from that number (-0.43), then converting it into a percentage (-43%).

43
44
45
46
47

³ This figure represents the maximum deviation—that is, the value of the range between the greatest negative deviation from the mean (-43.02%) and the district with the greatest positive deviation from the mean (+22.76%).

6	12722	72.29%	9197	673.72	8523.28	7.32%	1.38	+18.73%
7	13283	71.23%	9460.91	1338.07	8122.84	14.14%	1.40	+22.13%
Total	91067	n/a	54224.82	11754.19	42470.63	n/a	n/a	63.44%

20. In Illustrative Plans 1 and 2, District 1 (the majority-minority district) has about half as many eligible voters as Districts 3, 5, 6, and 7, and about 60% as many eligible voters as District 4. Additionally, District 2 in both Illustrative Plans has between 54% to 58% as many eligible voters as Districts 3, 5, 6, and 7, and 66% to 69% as many eligible voters as District 4.

RESPONSE:

It is undisputed only that Defendants' Fact #20 is consistent with the tables listed in Defendants' Fact #19. Plaintiffs further clarify Defendants' Fact #20 by noting that each illustrative plan presented in Mr. Cooper's initial report contained two majority-minority districts based on the percentage of Latino registered voters.

Plaintiffs object to Defendants' Fact #20 on the grounds that the report attached as Exhibit C to the Safarli Declaration speaks for itself. Plaintiffs' further objection to Defendants' Fact #20: hearsay; lack of foundation; not supported by a cited exhibit.

21. In both Illustrative Plans 1 and 2, Mr. Cooper packed Districts 1 and 2 with people who are not eligible to vote. This results in the dilution of voting power among eligible voters of minority groups who reside in other districts. For example, Districts 1 and 3 in Illustrative Plan 1 each contain about 1/5th of the City's Latino eligible voters (2217.91 and 2144.56, respectively). However, District 1 contains about twice as many eligible voters overall as District 3.

1 Consequently, an eligible Latino voter residing in District 3 has about half the
2 voting strength as an eligible Latino voter from District 1.
3

4
5 **RESPONSE:**

6 It is undisputed only that Defendants' Fact #21 is consistent with the tables
7 listed in Defendants' Fact #19, with one exception: according to the tables listed in
8 Defendants' Fact #19, District 3 contains approximately twice as many eligible
9 voters as District 1, not the other way around. Contrary to Defendants' Fact #21,
10 Mr. Cooper did not "pack" demonstrative Districts 1 and 2 with people who are not
11 eligible to vote, and Mr. Cooper's Illustrative Plans 1 and 2 do not result in the
12 dilution of voting power among eligible voters of minority groups who reside in
13 other districts. Defendants point to no record evidence that Mr. Cooper "packed"
14 demonstrative Districts 1 and 2 with people who are not eligible to vote, and in fact
15 Mr. Cooper's first report makes clear that he drew districts based on, among other
16 things, districting principles including geographic compactness.
17
18

19 Plaintiffs object to Defendants' Fact #21 on the grounds "packed" and
20 "dilution" reflect allegations of law rather than statements of fact. Plaintiffs also
21 object to Defendants' Fact #21 on the grounds that the report attached as Exhibit C
22 to the Safarli Declaration speaks for itself. Plaintiffs' further objection to
23 Defendants' Fact #21: mischaracterizes the evidence; hearsay; lack of foundation;
24 not supported by a cited exhibit; assumes facts not in evidence.
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 **D. Dr. Morrison’s Criticisms of Mr. Cooper’s Hypothetical Plans**

2
3 22. To rebut Mr. Cooper’s opinions, Defendants retained Peter Morrison,
4 Ph.D., an applied demographer.⁴ (Safarli Decl., Ex. E [Expert Report of Peter
5 Morrison, Ph.D.]
6
7

8 **RESPONSE:**
9

10 It is undisputed that Defendants retained Peter Morrison, that Dr. Morrison
11 describes himself, in his report, as an “applied demographer”, and that
12
13 Dr. Morrison purported to rebut Mr. Cooper’s opinions.
14
15

16 Plaintiffs object to Defendants’ Fact #22 on the grounds that the report
17 attached as Exhibit E to the Safarli Declaration speaks for itself.
18
19
20

21
22 23. Dr. Morrison criticized Mr. Cooper’s report on a number of grounds,
23 including the grossly malapportioned number of voting-age citizens in the districts
24 from Illustrative Plans 1 and 2. Dr. Morrison opined that Mr. Cooper’s “single-
25 minded purpose” was to create a district with a voting-age citizen population that
26 was a majority Latino, even though that “would invariably cause the votes of
27 eligible voters in that one district to carry far more weight than a vote in another
28 district.” (*Id.* at 14-15.)
29
30
31
32
33
34
35

36 **RESPONSE:**
37
38
39

40
41 ⁴ The following day, Defendants disclosed a revised report that fixed the
42 numbering of the paragraphs in Dr. Morrison’s report. No other substantive
43 changes were made. Defendants’ Summary Judgment Motion relies on the version
44 with the fixed paragraph numbers.
45
46
47

1 It is undisputed that Dr. Morrison's report set forth various criticisms of
2 Mr. Cooper's report and that the language quoted in Defendants' Fact #23 appears
3 in Dr. Morrison's report.
4

5
6 Plaintiffs object to Defendants' Fact #23 to the extent it only partially quotes
7 the cited exhibit and it mischaracterizes Mr. Cooper's illustrative plans and his
8 intent in drawing them. Plaintiffs further object to Defendants' Fact #23 on the
9 grounds that the report attached as Exhibit E to the Safarli Declaration speaks for
10 itself. Plaintiffs' further objection to Defendants' Fact #23: lack of foundation,
11 assumes facts not in evidence, argumentative, presents a legal conclusion.
12
13
14
15
16
17
18
19
20

21 24. Dr. Morrison calculated that District 1 in Mr. Cooper's Illustrative
22 Plan 1 contains approximately 1/7th or 14.3% of the City's total population
23 (12,533 of 91,067) but only 1/13th or 8.4% of the City's eligible voters (4,414.08
24 out of 54,233.82). As such, "8.4% of eligible voters [in District 1] would
25 necessarily exercise 14.3% of the power in electing City Council members—in
26 effect, 'one person, 1.7 votes.'" (*Id.* at 15.) Meanwhile, District 7 in Mr. Cooper's
27 Illustrative Plan 1 also contains about 14% of the City's population, but nearly
28 1/5th (17.4%) of the City's eligible voters (9,460.91 out of 54,233.82).
29
30
31
32
33
34
35

36 **RESPONSE:**
37

38 It is undisputed only that the quoted language and calculations included in
39 Defendants' Fact #24 appear in Dr. Morrison's report.
40
41

42 Plaintiffs object to Defendants' Fact #24 to the extent it only partially quotes
43 the cited exhibit. Plaintiffs further object to Defendants' Fact #24 on the grounds
44 that the report attached as Exhibit E to the Safarli Declaration speaks for itself.
45
46
47

1 Plaintiffs' further objection to Defendants' Fact #24: lack of foundation, assumes
2 facts not in evidence, argumentative, presents a legal conclusion.
3
4

5
6 25. Put differently, an eligible voter from District 1 casts a vote on
7 behalf of 2.8 residents of that district, while an eligible voter from District 7
8 would cast a vote on behalf of 1.4 residents. This results in a "political premium"
9 for votes in District 1, while votes in District 7 are "underweighted." (*Id.* at 15.) Dr.
10 Morrison concluded that this "imbalance" results from Mr. Cooper "giving
11 exclusive emphasis to Latino ethnicity in drawing each District 1." (*Id.* at 16.)
12
13
14
15
16
17

18 **RESPONSE:**
19

20 It is undisputed only that the quoted language and calculations included in
21 Defendants' Fact #25 appear in Dr. Morrison's report.
22
23

24 Plaintiffs object to Defendants' Fact #25 to the extent it only partially quotes
25 the cited exhibit. Plaintiffs further object to Defendants' Fact #25 on the grounds
26 that the report attached as Exhibit E to the Safarli Declaration speaks for itself.
27 Plaintiffs' further objection to Defendants' Fact #25: lack of foundation, assumes
28 facts not in evidence, argumentative, presents a legal conclusion.
29
30
31
32
33
34
35

36 26. Dr. Morrison also determined that a majority of the City's American
37 Indian, Asian, and African American voting-age citizens would be underweighted
38 because they would reside in districts with a high proportion of eligible voters. (*Id.*
39 at 16.)
40
41
42
43

44 **RESPONSE:**
45
46
47

1 Contrary to Defendants' Fact #26, Dr. Morrison did not "determine" or
2 calculate the statements made in Defendants' Fact #26 in his report; he merely
3 concluded as much without reference or citation. (*Id.* at 16.)
4

5
6 Plaintiffs clarify that *Mr. Cooper* determined that "more than 60% of the
7 minority population [including Native Americans, Asians, African Americans, and
8 Latinos] would reside in three single-member districts where a majority candidate
9 for city council could be expected to fare better than under an at-large citywide
10 election system. Minority voters would reside in two out of seven districts with a
11 majority of registered voters who are minority (predominantly Latino) versus zero
12 out of seven under the existing at-large system. This would not represent a dilution
13 of votes for minority voters vis-à-vis the current electoral scheme." ECF No. 69-6
14 at 40 (Safarli Decl., Ex. F at 40).
15
16

17 Plaintiffs further clarify that, based on the 2010 Census, Mr. Cooper
18 determined that 1.44% of Yakima's total population is American Indian and 1.41%
19 of Yakima's total population is Asian. ECF No. 69-3 at 7 (Safarli Decl., Ex. C at 7
20 fig.2).
21
22

23 Plaintiffs object to Defendants' Fact #26 on the grounds that the report
24 attached as Exhibit E to the Safarli Declaration speaks for itself. Plaintiffs' further
25 objection to Defendants' Fact #26: lack of foundation, assumes facts not in
26 evidence, argumentative, presents a legal conclusion.
27
28
29
30
31
32

33 27. At the conclusion of his discussion regarding the first Gingles factor,
34 Dr. Morrison posed two questions: First, "[i]s it constitutional to undersize the
35 citizen population in one (Latino) district while oversizing the citizen population in
36
37
38
39
40
41
42
43
44
45
46
47

1 another district? In other words, should only 4,414 or 4,547 citizens in
2 demonstration District 1 get to elect a member to the Yakima City Council . . .
3 while 9,461 or 9,511 citizens in a neighboring district get to elect another city
4 council member?” Second, “[w]ould this electoral imbalance cause the unlawful
5 dilution of votes cast by one or more protected groups (e.g. American Indians or
6 Asians) whose numbers are disproportionately concentrated outside demonstration
7 District 1?” (*Id.* at 17.)
8
9

10
11
12
13
14
15 **RESPONSE:**

16 It is undisputed only that the language quoted in Defendants’ Fact #27
17 appears in Dr. Morrison’s report.
18

19
20 Plaintiffs object to Defendants’ Fact #27 on the grounds that the report
21 attached as Exhibit E to the Safarli Declaration speaks for itself. Plaintiffs’ further
22 objection to Defendants’ Fact #27: lack of foundation, assumes facts not in
23 evidence, argumentative, presents a legal conclusion.
24
25
26
27
28
29

30
31 **E. Mr. Cooper’s Second Expert Report**

32 28. In his second expert report, Mr. Cooper created five new hypothetical
33 redistricting plans: Hypothetical Plans A through E. (Safarli Decl., Ex. F
34 [Supplemental Declaration of William Cooper] at 12-13, 22-23, 25-30.)
35
36
37

38
39 **RESPONSE:**

40 Undisputed.

41
42 Plaintiffs object to Defendants’ Fact #28 on the grounds that the report
43 attached as Exhibit F to the Safarli Declaration speaks for itself.
44
45
46
47

1 29. Mr. Cooper's plan included only the total population for each district
2 and the percentage of each district's population that are Latino eligible voters.
3

4 **RESPONSE:**
5

6 Contrary to Defendants' Fact #29, Mr. Cooper's Hypothetical Plans A
7 through E included additional information, including but not limited to graphic
8 representations of the districts, voting age populations, land area of districts, and
9 population deviations.
10

11 Plaintiffs object to Defendants' Fact #29 on the grounds that the report
12 attached as Exhibit F to the Safarli Declaration speaks for itself.
13
14

15 30. Through subsequent correspondence, Defendants' counsel received
16 the absolute number of Latino and non-Latino eligible voters in each district.
17 (Safarli Decl., Ex. G [email of Abha Khanna dated May 1, 2013 and attachment]).
18 In the tables below, Defendants' counsel calculated the absolute number of overall
19 voting-age citizens and each district's percentage of the total population that are
20 eligible voters.
21

22 **RESPONSE:**
23

24 It is undisputed that Defendants' counsel communicated with Plaintiffs'
25 counsel subsequent to receiving Mr. Cooper's second expert report and that
26 Plaintiffs' counsel provided data on the absolute number of Latino and non-Latino
27 voting age citizens in each district. Plaintiffs clarify that, prior to this
28 communication, Defendants had in their possession all of the necessary data and
29 information to calculate these numbers and that Plaintiffs provided the data as a
30 courtesy and in an attempt to avoid an unnecessary discovery dispute. Plaintiffs
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 further clarify that, contrary to the tables listed in Defendants' Fact #30, the
2 column labeled "Ratio of CVAP to pop." should read "Ratio of Pop. to CVAP."
3

4 Plaintiffs object to Defendants' Fact #30 on the grounds that the documents
5 attached as Exhibits F and G to the Safarli Declaration speak for themselves.
6

7 Plaintiffs' further objection to Defendants' Fact #30: hearsay; lack of foundation;
8 not supported by a cited exhibit.
9
10
11

12
13
14 31. According to Mr. Cooper, Hypothetical Plans A, B and C were
15 created to address some of Dr. Morrison's criticisms that do not pertain to this
16 motion. (Safarli Decl., Ex. F at 12, 22-27). But these three plans suffer from the
17 same imbalance as Illustrative Plans 1 and 2: Districts 1 and 2 have nearly half as
18 many eligible voters as Districts 3, 5, 6 and 7.
19
20
21
22
23

24
25 **RESPONSE:**

26 It is undisputed that Mr. Cooper created Hypothetical Plans A, B, and C to
27 demonstrate that, notwithstanding Dr. Morrison's contention, there are many ways
28 to satisfy the first *Gingles* factor by drawing at least one majority-Latino single
29 member district in Yakima. It is further undisputed that Defendants' Fact #31 is
30 consistent with the tables listed in Defendants' Fact #33. Contrary to Defendants'
31 Fact #31, none of the hypothetical or illustrative plans listed here "suffer" from an
32 "imbalance."
33
34
35
36
37
38
39

40 Plaintiffs object to Defendants' Fact #31 on the grounds that the report
41 attached as Exhibit F to the Safarli Declaration speaks for itself. Plaintiffs further
42 object to Defendants' characterization of Hypothetical Plans A, B, and C as
43 "suffer[ing]" from an "imbalance," as Defendants have identified no legal infirmity
44
45
46
47

1 based on these figures. Plaintiffs' further objection to Defendants' Fact #31: lack
2 of foundation, assumes facts not in evidence, presents a legal conclusion.
3
4

5
6
7 32. Hypothetical Plans D and E were created in direct response to Dr.
8 Morrison's conclusions regarding the imbalance in eligible voters throughout the
9 districts. (*Id.* at 27-31.) Mr. Cooper's Hypothetical Plan D equalized the number of
10 citizens in each district, which resulted in substantial deviations among each
11 district's population. (*Id.* at 28.) Mr. Cooper's Hypothetical Plan E equalized the
12 number of eligible voters in each district, which also caused significant population
13 deviation. (*Id.* at 30.) Both Hypothetical Plans D and E contain a district in which
14 the majority of eligible voters are Latino. (*Id.* at 28, 30.) However, Mr. Cooper
15 distanced himself from these plans by stating that "I do not believe that
16 *Hypothetical Plans D or E* should be relied upon for the first prong of *Gingles* or
17 as appropriate remedies in this case." (*Id.* at 31.)
18
19
20
21
22
23
24
25
26
27

28
29 **RESPONSE:**

30
31 It is undisputed that the language quoted above appears on page 32 of
32 Mr. Cooper's second report, and that Mr. Cooper stated in full that " while it is
33 certainly possible to draw an LCVAP-majority district using citizens or voting age
34 citizens as the apportionment base, I believe that a valid and constitutional
35 redistricting plan must use total population for the apportionment base. For this
36 reason, I do not believe that *Hypothetical Plans D or E* should be relied upon for
37 the first prong of *Gingles* or as appropriate remedies in this case." (*Id.* at 31-32.)
38
39
40
41
42
43
44

45 Plaintiffs object to Defendants' Fact #32 on the grounds that the report
46 attached as Exhibit F to the Safarli Declaration speaks for itself. Plaintiffs' further
47

1 object to Defendants' Fact #32 on the grounds that it mischaracterizes the evidence
2 to the extent it states that Mr. Cooper' "distanced himself from these plans."
3
4

5
6 33. Moreover, even though Mr. Cooper's Hypothetical Plans D and E
7 equalized the number of citizens and adult citizens, respectively, the ratio of adult
8 citizens to population varies wildly. For example, 35.54% of the population in
9 Hypothetical Plan E's District 1 are adult citizens, while District 7's population is
10 more than 70% adult citizens.
11
12

13
14
15
16 **RESPONSE:**
17

18 Plaintiffs clarify that, contrary to the tables listed in Defendants' Fact #33,
19 the column labeled "Ratio of CVAP to pop." should read "Ratio of Pop. to CVAP."
20 Plaintiffs further clarify that, without waiving their objections below, Plaintiffs'
21 calculations indicate that District 4 in the table entitled "Hypothetical Plan C" has a
22 deviation of CVAP from the mean of -8.27%, not -0.08%.
23
24
25
26
27

28 Plaintiffs further clarify that the tables included in Defendants' Fact #33 do
29 not include the CVAP deviation among the four primary districts in Yakima's
30 current district plan. Mr. Cooper's second expert report determines that: "The
31 hybrid at-large, 4-residency district plan adopted by the City in 2011 is grossly
32 malapportioned using either citizens or CVAP as the apportionment base. The
33 overall deviation for the 2011 Plan with a citizen apportionment base is 24.37%.
34 Using CVAP as the apportionment base, the oval deviation for the 2011 Plan is
35 43.33%. . . . It appears that total population is the apportionment base for the 2011
36 Plan, because that is the only population statistic reported on the map posted on the
37 City's website." (*Id.* at 31.)
38
39
40
41
42
43
44
45
46
47

1 Plaintiffs object to Defendants' Fact #33 on the grounds that the documents
2 attached as Exhibit F and G to the Safarli Declaration speak for themselves.

3
4 Plaintiffs' further objection to Defendants' Fact #33: hearsay; mischaracterization
5 of the evidence; lack of foundation; not supported by a cited exhibit.
6
7
8

9 ***Hypothetical Plan A***

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP ⁵	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	12819	34.43%	4414.20	2302.80	2111.40	52.17% or 50.18%	2.90	-43.02%
2	12421	39.61%	4920.30	2119.06	2801.24	43.07%/ or 41.81%	2.52	-36.49%
3	13026	70.13%	9135.01	2163.50	6971.51	23.68% or 24.16%	1.42	+17.91%
4	12676	58.52%	7455.41	1894.85	5560.56	25.42% or 25.78%	1.7	-3.77%
5	13666	68.32%	9336.82	1258.21	8078.61	13.48% or 13.54%	1.46	+20.51%
6	13176	72.19%	9511.15	677.69	8833.46	7.13% or 7.14%	1.39	+22.76%
7	13283	71.23%	9460.91	1338.07	8122.84	14.14% or 14.16%	1.40	+22.12%
Total	91067	n/a	54233.8	11754.18	42479.62	n/a	n/a	65.78%

31
32 ***Hypothetical Plan B***

33
34
35
36
37
38
39

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
----------	------	----------------	------	-------------	-----------------	-------------------------------	-----------------------	-------------------------------

40
41 ⁵ In Hypothetical Plan A, Mr. Cooper calculated two different Latino CVAP
42 percentages for each district because of a methodological disagreement raised by
43 Dr. Morrison that does not pertain to this motion. (See Safarli Decl., Ex. F at 2-
44 14.)
45
46
47

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	12995	31.69%	4119.22	2311.53	1807.69	56.12%	3.15	-46.83%
2	12706	48.01%	6099.61	1946.17	4153.44	31.91%	2.08	-21.27%
3	12632	68.49%	8651.99	2207.27	6444.72	25.51%	1.46	+11.67%
4	12866	54.96%	7070.82	2126.57	4944.25	30.08%	1.82	-8.74%
5	13323	69.05%	9200.11	1055.72	8144.39	11.48%	1.45	+18.75%
6	13413	72.25%	9690.90	714.19	8976.71	7.37%	1.38	+25.08%
7	13132	71.59%	9401.17	1392.75	8008.42	14.81%	1.40	+21.34%
Total	91067	n/a	54233.82	11754.2	42479.62	n/a	n/a	71.91%

Hypothetical Plan C

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	12384	31.25%	3870.40	2234.77	1635.63	57.74%	3.20	-50.04%
2	13243	47.66%	6311.90	2009.58	4302.32	31.84%	2.10	-18.53%
3	12632	68.49%	8651.99	2207.27	6444.72	25.51%	1.46	+11.67%
4	12940	54.93%	7107.34	2139.91	4967.43	30.11%	1.82	-0.08%
5	13323	69.05%	9200.11	1055.72	8144.39	11.48%	1.45	+18.75%
6	13413	72.25%	9690.90	714.19	8976.71	7.37%	1.38	+25.08%
7	13132	71.59%	9401.17	1392.75	8008.42	14.81%	1.40	+21.34%
Total	91067	n/a	54233.81	11754.19	42479.62	n/a	n/a	75.12%

Hypothetical Plan D

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	16622	33.41%	5554.14	3068.87	2485.27	55.25%	2.99	-28.31%
2	14403	48.68%	7011.25	2112.16	4899.09	30.13%	2.05	-9.50%
3	11601	73.70%	8549.49	1235.31	7314.18	14.45%	1.36	+10.35%
4	11783	65.58%	7727.61	2192.93	5534.68	28.38%	1.52	-0.25%
5	12372	62.18%	7692.76	1565.33	6127.43	20.35%	1.61	-0.71%
6	11821	76.92%	9092.92	535.57	8557.35	5.89%	1.30	+17.36%
7	12465	69.03%	8605.63	1044.02	7561.61	12.13%	1.45	+11.07%
Total	91067	n/a	54233.80	11754.19	42479.61	n/a	n/a	45.67%

Hypothetical Plan E

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	21265	35.63%	7577.36	3876.93	3700.43	51.16%	2.81	-2.20%
2	14972	50.59%	7574.01	2333.24	5240.77	30.81%	1.98	-2.24%
3	10671	74.01%	7897.12	1261.12	6636	15.97%	1.35	+1.93%
4	11812	67.31%	7951.1	1950.66	6000.44	24.53%	1.49	+2.63%
5	10718	71.51%	7664.53	1114.22	6550.31	14.54%	1.40	-1.07%
6	10751	73.81%	7934.83	205.6	7729.23	2.59%	1.35	-2.42%
7	10878	70.19%	7634.86	1012.42	6622.44	13.26%	1.42	-1.46%
Total	91067	n/a	54233.81	11754.19	42479.62	n/a	n/a	4.87%

34. Although Mr. Cooper's Hypothetical Plan E has very little deviation among the eligible voter populations, the maximum deviation among total population is 81.43% (District 1's deviation from the mean population of 13009.57 is +63.46%, while District 3's deviation is -17.98%). Similarly, Hypothetical Plan D, which roughly equalizes citizens of all ages among the districts, has a maximum total population deviation of 38.56% (District 1's deviation from the mean population of 13009.57 is +27.78% and District 3's deviation is -10.78%).

RESPONSE:

It is undisputed only that the figures are consistent with the tables presented in Defendants' Fact #33.

Plaintiffs object to Defendants' Fact #34 on the grounds that the documents attached as Exhibits F and G to the Safarli Declaration speak for themselves. Plaintiffs' further objection to Defendants' Fact #34: hearsay; mischaracterization of the evidence; lack of foundation; not supported by a cited exhibit.

1 **F. Mr. Cooper's Deposition**

2
3 35. In his deposition, Mr. Cooper responded to Dr. Morrison's criticism
4 that Mr. Cooper had a "single-minded purpose" of packing Latinos into a single
5 district "to boost Latinos' share among whatever *number* of voting-age citizens
6 that district happened to encompass." (Safarli Decl., Ex. E [expert report of Dr.
7 Morrison] at 14 (emphasis in original)). Mr. Cooper denied that he simply
8 "create[d] an LCVAP district and then stop[ped]." (Safarli Decl., Ex. H [deposition
9 transcript of Mr. Cooper] at 126:15-17.)
10
11
12
13
14
15

16 **RESPONSE:**

17
18 It is undisputed that the language quoted in Defendants' Fact #35 appears in
19 Dr. Morrison's report and in Mr. Cooper's deposition transcript.
20
21

22 Plaintiffs object to Defendants' Fact #35 on the grounds that the documents
23 attached as Exhibits E and H to the Safarli Declaration, respectively, speak for
24 themselves.
25
26
27
28
29

30
31 36. However, when asked if he attempted to "aggregate the most heavily
32 Latino contiguous areas so [he] could boost the Latino share among whatever
33 number of voting-age citizens that proposed district happened to encompass," Mr.
34 Cooper acknowledged that this aggregation was a "factor" in the creation of his
35 hypothetical plans. (*Id.* at 127:10-24.)
36
37
38
39

40 **RESPONSE:**

41
42 It is undisputed that the language quoted in Defendants' Fact #36 appears in
43 Mr. Cooper's deposition transcript. Plaintiffs clarify that Mr. Cooper's deposition
44 testimony quoted in Defendants' Fact #36 does not contradict and is not in tension
45
46
47

1 with the deposition testimony quoted in Defendants’ Fact #35, and as such
2
3 Plaintiffs object to Defendants’ Fact #36 on the grounds that it is misleading.

4
5 Plaintiffs further object to Defendants’ Fact #36 to the extent that it only
6
7 partially quotes the cited exhibit and on the grounds that the deposition transcript
8
9 attached as Exhibit H to the Safarli Declaration speaks for itself.

10
11
12
13 37. Mr. Cooper then testified that aggregating the Latino share of voting-
14
15 age citizens could not be considered “at the expense of other traditional
16
17 redistricting concerns,” such as “one-person/one-vote” and “compactness.” (*Id.* at
18
19 128:1-8.)

20
21 **RESPONSE:**

22
23 It is undisputed that the language quoted in Defendants’ Fact #37 appears in
24
25 Mr. Cooper’s deposition transcript.

26
27 Plaintiffs object to Defendants’ Fact #37 on the grounds that the deposition
28
29 transcript attached as Exhibit H to the Safarli Declaration speaks for itself.

30
31
32
33 38. Mr. Cooper explained that he “looked at other factors,” such as
34
35 “precinct lines,” “general compactness,” and “one-person/one-vote.” (*Id.* at
36
37 126:12-15.) Mr. Cooper explained that he considered “one-person/one-vote” by
38
39 ensuring that “no single district is more than five percent from the ideal population
40
41 size,” (*i.e.*, 1/7th of the City’s total population). (*Id.* at 126:18-25.)

42
43 **RESPONSE:**

44
45 It is undisputed that the language quoted in Defendants’ Fact #38 appears in
46
47 Mr. Cooper’s deposition transcript and that, in drawing demonstrative districts in

1 this matter, Mr. Cooper considered and utilized the traditional redistricting criteria
2 set out in Defendants' Fact #38.
3

4 Plaintiffs object to Defendants' Fact #38 on the grounds that the deposition
5 transcript attached as Exhibit H to the Safarli Declaration speaks for itself.
6
7

8
9
10 39. However, Mr. Cooper testified that, for Illustrative Plans 1 and 2 and
11 Hypothetical Plans A, B, and C, he simply attempted to equalize the overall
12 population for each district and did not consider the variation among any other
13 figures, such as the number of eligible voters. (*Id.* at 42:6-12; 43:22-44:2.)
14
15
16

17
18 **RESPONSE:**
19

20 It is undisputed that Mr. Cooper testified that he attempted to equalize the
21 overall population for each district and did not perform any type of deviation
22 analysis other than based on population, as that is the metric required under case
23 law and that has been used by courts in other cases in which Mr. Cooper has
24 provided demonstrative plans.
25
26
27

28 Plaintiffs object to Defendants' Fact #39 on the grounds that the deposition
29 transcript attached as Exhibit H to the Safarli Declaration speaks for itself.
30
31
32

33 40. For Hypothetical Plans D and E, Mr. Cooper did consider the
34 variation among other figures, namely the number of citizens in each district
35 (Hypothetical Plan D) and the number of eligible voters in each district
36 (Hypothetical Plan E). (Sarfali Decl., Ex. F [Supplemental Declaration of William
37 S. Cooper] at 27-32).
38
39
40
41
42
43
44

45
46 **RESPONSE:**
47

1 Undisputed.

2
3 Plaintiffs object to Defendants' Fact #40 on the grounds that the report
4 attached as Exhibit F to the Safarli Declaration speaks for itself.
5

6
7
8
9 41. In his deposition, however, Mr. Cooper testified that he created
10 Hypothetical Plans D and E exclusively in response to Dr. Morrison's "lengthy
11 discussion about voting power, and the fact that because there are more noncitizens
12 in districts 1 and 2, that the voting power for the rest of the city, residents in other
13 parts of the city, would be diminished."⁶ (Safarli Decl., Ex. H at 76:18- 77:10; *see*
14 *also id.* at 130:25-131:7.)
15
16
17
18
19

20
21 **RESPONSE:**

22 It is undisputed that the language quoted in Defendants' Fact #41 appears in
23 Mr. Cooper's deposition transcript. Plaintiffs clarify that Mr. Cooper stated he
24 only drafted Hypothetical Plans D and E to respond to Dr. Morrison, because
25 Mr. Cooper's understanding of the United States Constitution is that districts must
26 be drawn on the basis of total population. (*Id.* at 130:17-24).
27
28
29
30
31
32
33
34

35
36
37 ⁶ Mr. Cooper also explained his motivation for creating his other plans. According
38 to Mr. Cooper, he produced Illustrative Plans 1 and 2 and Hypothetical Plan A to
39 be "illustrative plans." (Safarli Decl., Ex. H at 126:5-8; *see also* 134:11- 12.) He
40 testified that these illustrative plans would be a starting point in the remedy phase.
41 (*Id.* at 136:6-11.) In contrast, he created Hypothetical Plans B and C "solely for the
42 purpose of meeting *Gingles I.*" (*Id.* at 126:8-9.)
43
44
45
46
47

1 Plaintiffs object to Defendants' Fact #41 on the grounds that the documents
2 attached as Exhibits F and H to the Safarli Declaration speak for themselves and on
3 the grounds that Defendants' Fact #41 (and in particular footnote 6)
4
5 mischaracterizes the evidence.
6
7
8
9

10
11 42. Although Mr. Cooper demonstrated that a majority-minority district
12 could be created using eligible voters as the apportionment basis, he did not testify
13 that he made any effort whatsoever to balance the number of eligible voters in each
14 district (one of the traditional redistricting factors) with other such factors. Indeed,
15 Mr. Cooper testified that "the fact that there may be more citizens in one district
16 than another really cannot be dealt with." (*Id.* at 131:25-132:6.)
17
18
19
20
21

22
23 **RESPONSE:**
24

25 It is undisputed that the language quoted in Defendants' Fact #42 appears in
26 Mr. Cooper's deposition transcript and that Mr. Cooper did not testify that he made
27 an effort to balance the number of voters in each district. Contrary to Defendants'
28 Fact #42, balancing the number of eligible voters in each district is not one of the
29 traditional redistricting factors, and Plaintiffs object to this statement because it
30 lacks any foundation, assumes facts not in evidence, does not cite to any record
31 evidence, and presents a legal conclusion..
32
33
34
35
36
37

38 Plaintiffs further object to Defendants' Fact #42 on the grounds that the
39 deposition transcript attached as Exhibit H to the Safarli Declaration speaks for
40 itself.
41
42
43
44
45
46
47

1 43. Mr. Cooper was then asked specifically about his understanding of
2 “electoral imbalance.” (*Id.* at 136:12-13.) Mr. Cooper testified that he understood
3 “electoral imbalance” in this litigation to refer to the fact that “there are a lot of
4 noncitizens in districts 1 and 2, then people in the other parts of the city are not
5 given an opportunity to have their votes count as much as those who are citizens in
6 districts 1 and 2.” (*Id.* at 136:20-24.)
7
8
9
10
11

12 **RESPONSE:**

13
14 It is undisputed that the language quoted in Defendants’ Fact #43 appears in
15 Mr. Cooper’s deposition transcript.
16

17 Plaintiffs object to Defendants’ Fact #43 on the grounds that the deposition
18 transcript attached as Exhibit H to the Safarli Declaration speaks for itself.
19
20
21
22

23
24 44. Mr. Cooper was asked whether he was concerned about “electoral
25 imbalance” in Illustrative Plans 1 and 2 and Hypothetical Plans A, B, and C. (*Id.* at
26 137:19-21.) Mr. Cooper responded that he “didn’t look at that question carefully.”
27 (*Id.* at 137:22.)
28
29
30
31

32 **RESPONSE:**

33
34 It is undisputed that the language quoted in Defendants’ Fact #44 appears in
35 Mr. Cooper’s deposition transcript.
36

37 Plaintiffs object to Defendants’ Fact #44 on the grounds that the deposition
38 transcript attached as Exhibit H to the Safarli Declaration speaks for itself.
39
40
41
42
43
44
45
46
47

1 **G. Dr. Morrison's Deposition**

2 45. Dr. Morrison—who attended Mr. Cooper's deposition—testified that
3
4 Yakima was

5
6 an exemplary case of the . . . dilemma that arises because
7 of the tension within the law. That we're obliged to draw
8 districts based on total population but when one gives
9 predominant emphasis to race or ethnicity, what can
10 happen . . . in certain local demographic settings, is that
11 you end up with an effort to concentrate Latinos in a
12 district in order to make them a majority of that district
13 and empower them to elect candidates of their choice,
14 while at the same time you are disenfranchising people in
15 other districts who are not only nonHispanic Whites but
16 may well be other racial minorities or in fact many other
17 Hispanics who happen to be citizens living in another
18 part of [t]own. And it creates a tension within the law
19 because originally drawing districts based on total
20 population would closely approximate equipopolous
21 districts in terms of persons who were entitled to vote.
22 But because of the demography that has come about in
23 this country in Latino communities you get this paradox
24 that has only come to the attention of demographers . . .
25 in the last ten years. And it's not something that one
26 encounters when dealing with the issue of African
27 American versus nonAfrican American populations.

28
29
30
31
32
33
34
35
36
37 (Safarli Decl., Ex. I at 24:22-25:23.)

38
39 **RESPONSE:**

40
41 It is undisputed that the language quoted in Defendants' Fact #45 appears in
42 Dr. Morrison's deposition transcript and that Dr. Morrison attended Mr. Cooper's
43 deposition. Plaintiffs clarify that contrary to Dr. Morrison's deposition testimony,
44
45
46
47

1 the creation of Latino-majority districts does not “disenfranchis[e]” voters in other
2 districts, nor does it create a tension in the law.
3

4
5 Plaintiffs object to Defendants’ Fact #45 on the grounds that the deposition
6 transcript attached as Exhibit I to the Safarli Declaration speaks for itself.
7

8
9 Plaintiffs’ further objection to Defendants’ Fact #45: hearsay, lack of foundation,
10 assumes facts not in evidence, and presents a legal conclusion.
11

12
13
14
15 46. Dr. Morrison was then asked whether parties are “obligated to use
16 total population as the apportionment basis” in redistricting plans. (*Id.* at 52:10- 11.)
17 Dr. Morrison responded that he believed “the law says one does,” but explained
18 that some deviation in population size among the districts was permitted in order to
19 that some deviation in population size among the districts was permitted in order to
20 “balanc[e] a number of redistricting criteria,” such as “communit[ies] of interest,”
21 “avoid[ing] splitting a precinct,” or “avoid[ing] an extreme degree of electoral
22 imbalance.” (*Id.* at 52:12-53:24.)
23
24
25
26
27

28
29 **RESPONSE:**

30
31 It is undisputed that the language quoted in Defendants’ Fact #46 appears in
32 Dr. Morrison’s deposition transcript. Plaintiffs clarify that contrary to
33 Dr. Morrison’s deposition testimony, “avoid[ing] an extreme degree of electoral
34 imbalance” is not a traditional redistricting criterion that has been recognized by
35 law.
36
37
38
39

40
41 Plaintiffs object to Defendants’ Fact #46 on the grounds that the deposition
42 transcript attached as Exhibit I to the Safarli Declaration speaks for itself.
43

44
45 Plaintiffs’ further objection to Defendants’ Fact #46: hearsay, lack of foundation,
46 assumes facts not in evidence, and presents a legal conclusion.
47

1
2
3 47. Dr. Morrison testified that Mr. Cooper did not “seem to be able to
4 conceptualize the factors that need to be balanced when you talk about
5 balancing traditional redistricting criteria.” (*Id.* at 55:12-18.) Dr. Morrison
6 continued:
7
8
9

10
11 [Mr. Cooper] seems to be totally unaware of what
12 was happening with the damage that was being done to
13 the weighting of votes across the city by configuring
14 District 1 in that way.
15
16

17 [. . .] I certainly haven’t read in his report and
18 didn’t hear in the deposition yesterday any specific way
19 in which he accounted for the various traditional
20 redistricting criteria. . . . I didn’t hear him respond
21 specifically how he had taken account, for example, of
22 the differential weighting of votes. That is to say I would
23 have liked to have heard him say [‘]I noticed that there
24 was a severe imbalance and, therefore, I took this step to
25 try to moderate the imbalance. So while it still existed . . .
26 I had reduced its severity as one step in trying to balance
27 redistricting criteria.[’]
28
29
30
31
32

33 (*Id.* at 55:18-56:10.)

34
35 **RESPONSE:**

36
37 It is undisputed that the language quoted in Defendants’ Fact #47 appears in
38 Dr. Morrison’s deposition transcript. Plaintiffs clarify that contrary to
39 Dr. Morrison’s deposition testimony, taking “account” of the “differential
40 weighting of votes” is not a recognized traditional redistricting criterion.
41
42
43

44 Plaintiffs object to Defendants’ Fact #47 on the grounds that the deposition
45 transcript attached as Exhibit I to the Safarli Declaration speaks for itself.
46
47

1 Plaintiffs' further objection to Defendants' Fact #47: argumentative, hearsay, lack
2 of foundation, assumes facts not in evidence, and presents a legal conclusion.
3
4

5
6 48. Dr. Morrison testified that he believed Mr. Cooper had not created a
7 plan "that balances these criteria where one can look at it and say yes, it's a
8 reasonable compromise for someone who has to take all these things into
9 consideration." (*Id.* at 56:22-25.)
10
11
12
13

14 **RESPONSE:**

15
16 It is undisputed that the language quoted in Defendants' Fact #48 appears in
17 Dr. Morrison's deposition transcript. Plaintiffs clarify that contrary to
18 Dr. Morrison's deposition testimony, "avoid[ing] an extreme degree of electoral
19 imbalance" is not a traditional districting criterion that has been recognized by law.
20
21
22
23

24 Plaintiffs object to Defendants' Fact #48 on the grounds that the deposition
25 transcript attached as Exhibit I to the Safarli Declaration speaks for itself.
26
27 Plaintiffs' further objection to Defendants' Fact #48: argumentative, hearsay, lack
28 of foundation, assumes facts not in evidence, and presents a legal conclusion.
29
30
31
32
33

34 49. Dr. Morrison further testified that he did not believe Mr. Cooper "had
35 even thought about the problem of the severe overweighting and underweighting of
36 votes depending on which district an elector happens to reside in." (*Id.* at 57:2-6.)
37
38 Dr. Morrison stated that "at a minimum," Mr. Cooper "subordinated" the
39 traditional redistricting criteria of "electoral imbalance" to "[r]ace or ethnicity,"
40 and that race or ethnicity was "the predominant factor in drawing District 1 in all
41 of these plans." (*Id.* at 57:13-20; 58:14-16.)
42
43
44
45
46
47

RESPONSE:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

It is undisputed that the language quoted in Defendants' Fact #49 appears in Dr. Morrison's deposition transcript. Contrary to Dr. Morrison's testimony, race or ethnicity was not the predominant factor in drawing District 1 in Mr. Cooper's demonstrative plans. (*See supra* ¶¶ 35-38 and responses thereto.) Plaintiffs further clarify that contrary to Dr. Morrison's deposition testimony, "electoral imbalance" is not a recognized traditional redistricting criterion.

Plaintiffs object to Defendants' Fact #49 on the grounds that the deposition transcript attached as Exhibit I to the Safarli Declaration speaks for itself. Plaintiffs' further objection to Defendants' Fact #49: argumentative, hearsay, lack of foundation, assumes facts not in evidence, and presents a legal conclusion.

50. Later in his deposition, Dr. Morrison was asked whether his "position" was that the "eligible voters in District 1 may be more heavily weighted than those in the surrounding district." (*Id.* at 159:1-3.) Dr. Morrison agreed. (*Id.* at 159:4.)

RESPONSE:

It is undisputed that the language quoted in Defendants' Fact #50 appears in Dr. Morrison's deposition transcript.

Plaintiffs object to Defendants' Fact #50 on the grounds that the deposition transcript attached as Exhibit I to the Safarli Declaration speaks for itself.

51. He was then asked whether this "issue go[es] to whether or not plaintiffs can satisfy *Gingles* 1." (*Id.* at 159:5-6.) Dr. Morrison explained that the

1 issue does raise doubts “about a plan being able to satisfy *Gingles* 1 when there is
2 such a severe malapportionment of eligible voters.” (*Id.* at 159:18-23.)

3
4
5 **RESPONSE:**

6 It is undisputed that the language quoted in Defendants’ Fact #51 appears in
7 Dr. Morrison’s deposition transcript.
8

9
10 Plaintiffs object to Defendants’ Fact #51 on the grounds that the deposition
11 transcript attached as Exhibit I to the Safarli Declaration speaks for itself.
12

13 Plaintiffs further object that Defendants’ Fact #51 only partially quotes the cited
14 exhibit. Plaintiffs’ further objection to Defendants’ Fact #51: lack of foundation,
15 assumes facts not in evidence, and presents a legal conclusion.
16
17
18
19
20

21
22
23 52. Dr. Morrison testified that the concern about the malapportionment of
24 eligible voters does not mean that a Section 2 plaintiff should not attempt to create
25 a majority-minority district under the first *Gingles* factor. (*Id.* at 164:1-3). Instead,
26 the concern is “a matter of recognizing the traditional redistricting criteria, all of
27 them, and trying to achieve some reasonable balance among them. And it requires
28 on the part of the person doing it first all recognizing them all, which . . . Mr.
29 Cooper has overlooked several and . . . seems not to understand what they are, and
30 secondly, achieving some balance among them in a way that one can articulate
31 what the balance is and what the rationale was. And again that is another step
32 where I haven’t seen any evidence that that occurred in what Mr. Cooper *did.*” (*Id.*
33 at 167:5-15.)
34
35
36
37
38
39
40
41
42
43

44 **RESPONSE:**
45
46
47

1 It is undisputed that the language quoted in Defendants’ Fact #52 appears in
2 Dr. Morrison’s deposition transcript.
3

4 Plaintiffs object to Defendants’ Fact #52 on the grounds that the deposition
5 transcript attached as Exhibit I to the Safarli Declaration speaks for itself.
6
7 Plaintiffs’ further objection to Defendants’ Fact #52: argumentative, hearsay, lack
8 of foundation, assumes facts not in evidence, and presents a legal conclusion.
9
10
11
12
13

14 53. Dr. Morrison was also asked if there was a “tipping point” for a
15 magnitude of electoral imbalance that would make it “unacceptable.” (*Id.* at
16 166:10-12.) Dr. Morrison responded that he “d[idn’t] envision it as a tipping point.”
17 (*Id.* at 166:13-14.) Instead, he “envision[ed] it as . . . how avoidable is the
18 magnitude. That is to say however big it could be, how far away from that
19 maximum are you or however big is it, can you make it smaller while respecting
20 other traditional redistricting considerations.” (*Id.* at 166:13-18.)
21
22
23
24
25
26
27

28 **RESPONSE:**
29

30 It is undisputed that the language quoted in Defendants’ Fact #53 appears in
31 Dr. Morrison’s deposition transcript.
32

33 Plaintiffs object to Defendants’ Fact #53 on the grounds that the deposition
34 transcript attached as Exhibit I to the Safarli Declaration speaks for itself.
35
36 Plaintiffs’ further objection to Defendants’ Fact #53: lack of foundation, assumes
37 facts not in evidence, and presents a legal conclusion.
38
39
40
41
42
43
44

45 54. Dr. Morrison was then asked what his “proposed solution” would be
46 to address the concern about Mr. Cooper’s disregard for electoral imbalance. (*Id.* at
47

1 169:13-16.) Dr. Morrison responded: “My proposed solution would be to try to
 2 adjust the boundaries of District 1 and I guess to some extent District 2 in a way
 3 that would accord with [Mr. Cooper’s] desire to concentrate Latinos in a district
 4 but that would have the effect of perhaps reducing the degree of imbalance
 5 somewhat.” (*Id.* at 169:17-21.)
 6
 7
 8
 9

10 **RESPONSE:**
 11

12 It is undisputed that the language quoted in Defendants’ Fact #54 appears in
 13 Dr. Morrison’s deposition transcript.
 14

15 Plaintiffs object to Defendants’ Fact #54 on the grounds that the deposition
 16 transcript attached as Exhibit I to the Safarli Declaration speaks for itself.
 17

18 Plaintiffs’ further objection to Defendants’ Fact #54: lack of foundation, assumes
 19 facts not in evidence, and presents a legal conclusion.
 20
 21
 22
 23
 24
 25

26 55. Dr. Morrison was then asked about the paragraph in his report stating
 27 that “eligible voters who would be most severely disadvantaged include the
 28 majority of the City’s American Indian, Asian, and African American eligible
 29 voters.” (*Id.* at 170:14-171:2; Safarli Decl., Ex. E [report of Dr. Morrison] at 16.)
 30 Dr. Morrison explained that he did not present data in his report to support this
 31 conclusion, but he had “analyzed the data” and “it’s obvious that that would be the
 32 effect.”⁷ (*Id.* at 171:3-9.) Dr. Morrison testified that he would likely have an
 33
 34
 35
 36
 37
 38
 39
 40
 41

42 ⁷ The data for this issue are contained in the publicly-available U.S. Census
 43 Bureau’s 2007-2011 American Community Survey 5-Year Estimate (“5-Year
 44 Estimate”), which was relied on by both Mr. Cooper and Dr. Morrison. The 5-
 45
 46
 47

1 exhibit at trial demonstrating the disadvantage to minorities caused by Mr.
2
3 Cooper's plan. (*Id.* at 171:8-9).

4
5 **RESPONSE:**

6
7 It is undisputed that the language quoted in Defendants' Fact #55 appears in
8
9 Dr. Morrison's deposition transcript.

10
11 Plaintiffs clarify that, when asked whether "the American Indian population
12
13 in the city of Yakima [is] geographically compact and sufficiently numerous to
14
15 form a majority in a single member district," Dr. Morrison answered, "I haven't
16
17 looked at it but I doubt it is." Dr. Morrison had the "same answer" with respect to
18
19 the Asian and African-American populations in the City of Yakima. (*Id.* at
20
21 175:17-176:4.)

22
23 Plaintiffs object to Defendants' Fact #55 on the grounds that the deposition
24
25 transcript attached as Exhibit I to the Safarli Declaration speaks for itself.
26
27 Plaintiffs' further objection to Defendants' Fact #55: lack of foundation, assumes
28
29 facts not in evidence, and presents a legal conclusion.
30
31
32
33
34
35

36
37 Year Estimate shows the voting-age citizen population of American Indians,
38
39 Asians, and African Americans within each census block group that is wholly or
40
41 partly within the hypothetical districts created by Mr. Cooper in each of his
42
43 redistricting plans. (Sarfali Decl., Ex. F.) Tabulating these data would reveal that a
44
45 majority of voting-age American Indians and Asians reside outside of Districts 1
46
47 and 2 from Mr. Cooper's hypothetical plans.

1 56. Lastly, Dr. Morrison was asked how he knew whether Mr. Cooper
2
3 “gave predominant emphasis or maybe even exclusive emphasis to . . . Latino
4
5 ethnicity.” (*Id.* at 180:17-19.) Dr. Morrison responded that “[c]ertainly there is
6
7 every indication that he gave predominant emphasis in the sense that I don’t see
8
9 any evidence of any other factor that was given equal importance.” (*Id.* at 181:18-
10
11 21; 182:1-5.)

12 **RESPONSE:**

13
14 It is undisputed that the language quoted in Defendants’ Fact #56 appears in
15
16 Dr. Morrison’s deposition transcript.

17
18 Plaintiffs object to Defendants’ Fact #56 on the grounds that the deposition
19
20 transcript attached as Exhibit I to the Safarli Declaration speaks for itself.

21
22 Plaintiffs’ further objection to Defendants’ Fact #56: lack of foundation, assumes
23
24 facts not in evidence, presents a legal conclusion.
25
26

27
28
29 **H. Mr. Cooper’s Third Expert Report**

30 57. On April 25, 2014, Plaintiffs produced a third report from Mr. Cooper,
31
32 which incorporated more recent citizenship and voter registration statistics for
33
34 Illustrative Plans 1 and 2 and Hypothetical Plans A, B and C. (Sarfali Decl., Ex. J
35
36 [Second Supplemental Declaration of William Cooper] at 1-5.)
37

38 **RESPONSE:**

39 Undisputed.
40
41
42
43
44
45
46
47

1 58. Plaintiffs' counsel provided additional data for various figures in the
2 districts created by Mr. Cooper. (Safarli Decl., Ex. K [email of Plaintiffs' counsel
3 Ben Stafford dated May 2, 2014 and attachment]).
4
5

6 **RESPONSE:**
7

8 It is undisputed that Plaintiffs' counsel provided additional data subsequent
9 to producing Mr. Cooper's third expert report. Plaintiffs clarify that, prior to this
10 communication, Defendants had in their possession all of the necessary data and
11 information to calculate these numbers and that Plaintiffs provided the data as a
12 courtesy and in an attempt to avoid an unnecessary discovery dispute.
13
14
15
16
17
18
19

20 59. Cooper did not provide updated information for Hypothetical Plans D
21 and E. *Id.* at 4 n.6.
22
23

24 **RESPONSE:**
25

26 It is undisputed that Mr. Cooper did not provide updated information for
27 Hypothetical Plans D and E. Plaintiffs clarify that, contrary to the tables listed in
28 Defendants' Fact #59, the column labeled "Ratio of CVAP to pop." should read
29 "Ratio of Pop. to CVAP."
30
31
32
33

34 Plaintiffs object to Defendants' Fact #59 on the grounds that the documents
35 attached as Exhibits J and K to the Safarli Declaration speak for themselves.
36 Plaintiffs' further objection to Defendants' Fact #59: hearsay; mischaracterization
37 of the evidence; lack of foundation; not supported by a cited exhibit.
38
39
40
41
42
43
44
45
46
47

Illustrative Plan 1 (updated)

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	12533	38.43%	4815.95	2625.14	2190.80	54.51%	2.60	-38.75%
2	13358	40.51%	5411.56	2506.26	2905.30	46.31%	2.47	-31.18%
3	12859	68.30%	8792.25	2180.90	6611.36	24.80%	1.46	+11.81%
4	13175	58.99%	7772.07	2074.60	5697.47	26.69%	1.70	-1.16%
5	12683	69.15%	8769.88	1071.01	7698.88	12.21%	1.45	+11.52%
6	13176	73.12%	9634.26	685.23	8949.03	7.11%	1.37	+22.52%
7	13283	74.14%	9847.40	1491.29	8356.11	15.14%	1.35	+25.23%
Total	91067	n/a	55043.37	12634.43	42408.95	n/a	n/a	63.98%

Illustrative Plan 2 (updated)

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	12969	38.66%	5013.86	2742.57	2271.29	54.70%	2.59	-36.24%
2	12822	41.03%	5260.51	2397.52	2862.99	45.58%	2.44	-33.10%
3	13079	68.05%	8900.04	2205.47	6694.57	24.79%	1.47	+13.18%
4	13431	58.59%	7869.02	2109.44	5759.58	26.81%	1.71	+0.01%
5	12761	69.26%	8837.92	1018.78	7819.15	11.53%	1.44	+12.40%
6	12722	73.22%	9314.62	669.36	8645.26	7.19%	1.37	+18.46%
7	13283	74.14%	9847.40	1491.29	8356.11	15.14%	1.35	+25.23%
Total	91067	n/a	55043.37	12634.43	42408.95	n/a	n/a	61.47%

Hypothetical Plan A (updated)

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	12819	39.20%	5025.58	2790.59	2235.00	55.53%	2.55	-36.09%
2	12421	39.42%	4896.81	2314.16	2582.64	47.26%	2.54	-37.73%
3	13026	68.48%	8920.28	2212.74	6707.54	24.81%	1.46	+13.44%
4	12676	59.63%	7559.12	1896.08	5663.04	25.08%	1.68	-3.87%
5	13666	67.02%	9159.93	1244.34	7915.59	13.58%	1.49	+16.49%
6	13176	73.12%	9634.26	685.23	8949.03	7.11%	1.37	+22.52%
7	13283	74.14%	9847.40	1491.29	8356.11	15.14%	1.35	+25.23%
Total	91067	n/a	55043.38	12634.43	42408.95	n/a	n/a	62.96%

Hypothetical Plan B (updated)

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	12995	34.17%	4439.74	2632.75	1806.99	59.30%	2.93	-43.54%
2	12706	48.01%	6099.86	2111.74	3988.12	34.62%	2.08	-22.42%
3	12632	65.99%	8336.09	2230.27	6105.82	26.75%	1.52	+6.01%
4	12866	59.19%	7615.99	2369.45	5246.54	31.11%	1.69	-3.15%
5	13323	67.84%	9038.34	1063.85	7974.50	11.77%	1.47	+14.94%
6	13413	72.80%	9764.91	703.33	9061.58	7.20%	1.37	+24.18%
7	13132	74.23%	9748.45	1523.05	8225.40	15.62%	1.35	+23.97%
Total	91067	n/a	55043.38	12634.44	42408.95	n/a	n/a	67.72%

Hypothetical Plan C (updated)

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	12384	33.93%	4202.31	2559.62	1642.69	60.91%	2.95	-46.55%
2	13243	47.26%	6307.26	2175.80	4131.45	34.50%	2.10	-19.79%
3	12632	65.99%	8336.09	2230.27	6105.82	26.75%	1.52	+6.01%
4	12940	59.09%	7646.02	2378.51	5267.51	31.11%	1.69	-2..76
5	13323	67.84%	9038.34	1063.85	7974.50	11.77%	1.47	+14.94%
6	13413	72.80%	9764.91	703.33	9061.58	7.20%	1.37	+24.17%
7	13132	74.23%	9748.45	1523.05	8225.40	15.62%	1.35	+23.97%
Total	91067	n/a	55043.38	12634.43	42408.95	n/a	n/a	70.72%

1 DATED: July 22, 2014

s/ Kevin J. Hamilton

Kevin J. Hamilton, WSBA No. 15648
Abha Khanna, WSBA No. 42612
William B. Stafford, WSBA No. 39849
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: 206.359.8000
Fax: 206.359.9000
Email: KHamilton@perkinscoie.com
Email: AKhanna@perkinscoie.com
Email: WStafford@perkinscoie.com

s/ Sarah A. Dunne

Sarah A. Dunne, WSBA No. 34869
La Rond Baker, WSBA No. 43610
AMERICAN CIVIL LIBERTIES UNION OF
WASHINGTON FOUNDATION
901 Fifth Avenue, Suite 630
Seattle, Washington 98164
Telephone: (206) 624-2184
Email: dunne@aclu-wa.org
Email: lbaker@aclu-wa.org

s/ Joaquin Avila

Joaquin Avila (*pro hac vice*)
P.O. Box 33687
Seattle, WA 98133
Telephone: (206) 724-3731
Email: joaquineavila@hotmail.com

s/ M. Laughlin McDonald

M. Laughlin McDonald (*pro hac vice*)
ACLU Foundation
230 Peachtree Street, NW Suite 1440
Atlanta, Georgia 30303-1513
Telephone: (404) 523-2721
Email: lmcdonald@aclu.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on July 22, 2014, I electronically filed the foregoing Plaintiffs’ Responses and Objections to Defendants’ Statement of Material Facts with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorney(s) of record:

Francis S. Floyd WSBA 10642
John Safarli WSBA 44056
Floyd, Pflueger & Ringer, P.S.
200 W. Thomas Street, Suite 500
Seattle, WA 98119
(206) 441-4455
ffloyd@floyd-ringer.com
jsafarli@floyd-ringer.com

*Counsel for
Defendants*

- VIA CM/ECF SYSTEM
- VIA FACSIMILE
- VIA MESSENGER
- VIA U.S. MAIL
- VIA EMAIL

I certify under penalty of perjury that the foregoing is true and correct.

DATED: July 22, 2014

PERKINS COIE LLP

s/Abha Khanna
Abha Khanna, WSBA No. 42612
AKhanna@perkinscoie.com
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
(206) 359-6217

Attorney for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47