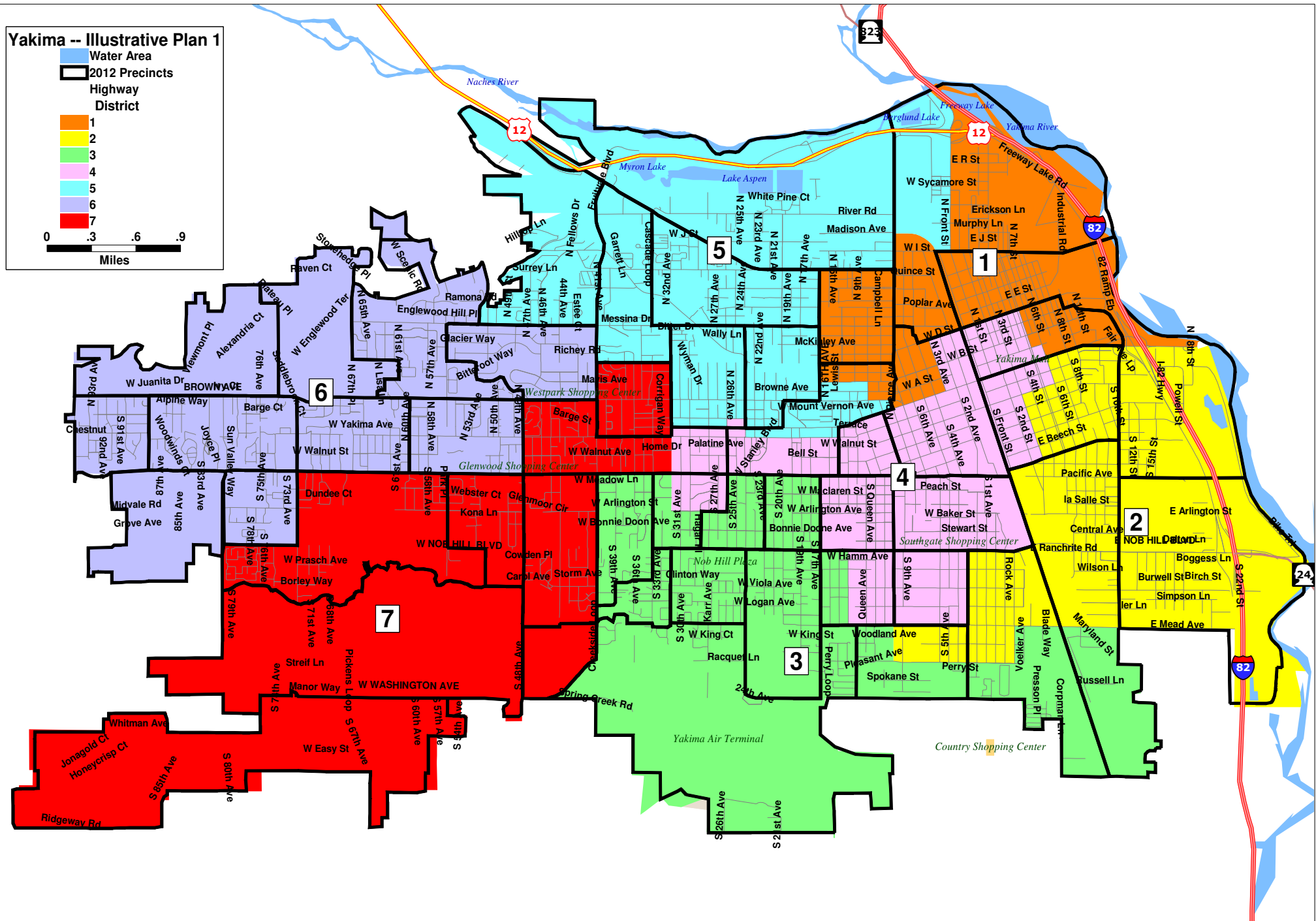
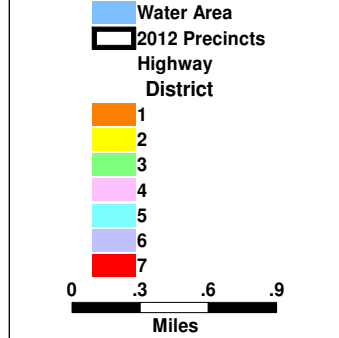


EXHIBIT 1

Yakima -- Illustrative Plan 1



Population Summary Report

Yakima City Council --Illustrative Plan 1

District	Population	Deviation	% Deviation	Hisp.	% Hisp.	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+ Hisp.	% 18+ Hisp.	18+ NH DOJ Indian	%18+ NH DOJ 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	21837	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) % LCVAP 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.

EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Rogelio Montes and Mateo Arteaga

Plaintiffs,

v.

City of Yakima, et. al.

Defendants.

CV- 12-3108-TOR

REPORT ON REMEDY
OF RICHARD L. ENGSTROM, Ph.D.

I declare the following:

1. My name is Richard L. Engstrom and I have submitted an initial Report, a Reply Report, and a Supplemental Report previously in this case.¹

2. The attorneys for the Plaintiffs in this case have requested that I perform an analysis to evaluate the opportunity that Latinos have to elect a representative of their choice in the at-large seats in the Defendants' proposed remedy.

THE AT-LARGE SEATS IN THE PROPOSED REMEDY

3. The Defendants have proposed as a remedy an election system in which five members of the city council will be elected in single member districts and two members will be elected at-large. The at-large seats are to be elected in a single election contest in which all candidates seeking an at-large seat will compete with all of the other candidates

¹ On p. 2 of my initial Report I listed the cases in which I had testified as an expert witness either in deposition or at trial since 2008. Since that Report I have testified by deposition and/or at trial in *Romo v. Dezner* (Cir. Ct. for the 2nd Jud. Dist. in and for Leon County, FL, 2013, 2014), *Hall v. State*

seeking an at-large seat. The election will be conducted through a limited voting system in which each voter will be allowed to cast one vote. The winners of the seats will be determined by a plurality vote rule; the top two candidates in votes received will be declared elected. The elections will be held on a nonpartisan basis, without the party affiliations of the candidates appearing on the ballots.

LIMITED VOTING SYSTEMS²

4. Limited voting systems, *depending on how they are structured*, can provide a cohesive minority of voters with a “meaningful opportunity” to elect one or more representatives of their choice in an at-large context. By limiting the number of votes each voter has, the likelihood that a cohesive majority that does not share the candidate preferences of the minority to win each of the at-large seats is reduced. The critical feature of a limited voting system, in terms of minority electoral opportunities, is that such opportunities increase *the more limited the vote is compared to the number of seats to be elected*, even when voting is polarized between the two groups.

5. The opportunities that limited voting systems provide minority voters to elect candidates of their choice is typically assessed, theoretically, through a coefficient known as the *Threshold of Exclusion*.³ This coefficient identifies the percentage of the electorate that a group, e.g., Latinos, must exceed in order to elect a candidate of its choice

of Louisiana, (M.D. LA, 2014), *Texas Latino Redistricting Task Force* (W.D. TX 2014), and *Rodriguez v. Grand Prairie Independent School District* (N.D. TX 2014).

² See Richard L. Engstrom, “Cumulative and Limited Voting: Minority Electoral Opportunities and More,” *Saint Louis University Public Law Review*, 30 (No. 1, 2010).

³ Douglas W. Rae, Victor Hanby, and John Loosemore, “Thresholds of Representation and Thresholds of Exclusion: An Analytic Note on Electoral Systems,” *Comparative Political Studies* 47 (January 1971): 479.

regardless of how the rest of the voters vote. This coefficient is based on a set of worst case assumptions, from the minority group's perspective, about the behavior of the majority voters (e.g., non-Latino voters). These assumptions are:

- (1) the majority voters cast all of the votes available to them, but
- (2) none of their votes are cast for the candidate preferred by the minority voters, but rather are
- (3) concentrated entirely on a number of other candidates equal to the number of seats to be filled, and are
- (4) divided evenly among those other candidates.

The majority voters, in short, are assumed to cast their votes as efficiently as possible in a multi-seat election.

6. The Threshold of Exclusion identifies the importance of both the number of seats to be filled and how limited the vote is in determining minority electoral opportunity when voting is polarized between the two groups. The size of this threshold depends on both characteristics of an election. The formula for calculating the thresholds for limited voting, based on the worst case assumptions, expressed as a percentage is:

$$\frac{(\text{Number of Votes})}{(\text{Number of Votes}) + (\text{Number of Seats})} \times 100$$

In a four-seat, one-vote limited voting system the threshold of exclusion is 20.0% $[(1/5) \times 100 = 20.0]$. In other words, out of 1,000 voters, if a group constituting 20% + 1, or 201, of the voters chose to vote for a particular candidate, then that candidate must win one of the seats. The other 799 voters could distribute their votes as evenly as possible

across four other candidates, resulting in three of them receiving 200 votes apiece and one receiving 199. In this situation, the candidate preferred by the minority group will be a winner.

7. Values of the Threshold of Exclusion for different numbers of seats and votes are reported in Table 1. As is clear from the table, when only one vote is allocated to voters, the value of the threshold becomes larger as the number of seats at issue becomes smaller. In other words, the lower the number of seats, the larger the relative presence of minority voters must be to exceed the threshold. As the table shows, the threshold varies from 33.3 percent to 12.5 percent as the number of seats in a one-vote election varies from 2 through 7.

EVALUATING THE LIMITED VOTING PORTION OF THE CITY'S PROPOSED REMEDY

8. As revealed in Table 1, the value of the Threshold of Exclusion for the two-seat one-vote at-large election arrangement proposed by the City of Yakima is 33.33 percent. The Latino percentage of the CVAP in the city, in comparison, is substantially below that, 22.66 percent based on the latest five-year American Community Survey, 24.17 percent based on the latest three-year American Community Survey, and 26.54 percent based on the latest one-year American Community Survey.⁴

9. The court has found the evidence to reveal racially polarized voting in the recent at-large elections for the city council in Yakima. There was “a clear picture of Latino voter cohesion” in their support for Latino candidates (Op. at 35), along with “low levels of ‘crossover’ support” by non-Latino voters for those

⁴ These figures were obtained from the reports submitted by William S. Cooper.

candidates (ibid., at 55). Given the polarized nature of the voting in Yakima council elections and the gap between the Latino CVAP and the value of the Threshold of Exclusion, it appears that the proposed two-seat one-vote arrangement in Yakima will continue to have a dilutive effect.

Table 1: Threshold of Exclusion Values

<u>Number of Seats</u>	<u>1 Vote</u>	Limited Voting <u>2 Votes</u>	<u>3 Votes</u>
2	33.3	—	—
3	25.0	40.0	—
4	20.0	33.3	42.9
5	16.7	28.6	37.5
6	14.3	25.0	33.3
7	12.5	22.2	30.0

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Executed on October 3, 2014.
in Durham, NC.



Richard L. Engstrom

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WASHINGTON

ROGELIO MONTES and MATEO ARTEAGA, PLAINTIFFS

v. CIVIL ACTION NO. 12-cv-3108-TOR

CITY OF YAKIMA, WASHINGTON, *et al.* DEFENDANTS

THIRD SUPPLEMENTAL DECLARATION OF WILLIAM S. COOPER

WILLIAM S. COOPER, acting in accordance with 28 U.S.C. §1746 and Rules 702 and 703 of the Federal Rules of Evidence, does hereby declare and say:

1. My name is William S. Cooper. I serve as a demographic and redistricting expert for the Plaintiffs. I submitted a Declaration in this case on February 1, 2013 and Supplemental Declarations on April 19, 2013 and April 25, 2014.
2. I have prepared this supplemental declaration to provide additional background on recent trends in Latino citizenship in Yakima, including the latest citizenship estimates from the *2013 1-year American Community Survey* (ACS) published by the U.S. Census Bureau on September 18, 2014. In prior declarations,

I have reported estimates from the 3-year ACS (2009-11 and 2010-12) and 5-year ACS (2007-11 and 2008-12).¹

3. According to the 2013 ACS, Latinos represent 37.67% of the citizen population in Yakima and 26.54% of the citizen voting age population. This represents about a two percentage point increase for both categories compared to the 2012 ACS estimates, which were 35.69% and 23.91% respectively.²

4. As shown in the line chart in **Figure 1**, viewed over a 5-year period, the 1-year ACS Latino citizen voting age population (LCVAP) percentage in Yakima shows a sharp uptrend – from a low of 17.72% in 2009 to 26.54% in 2013.

¹ The Census Bureau will release the 2011-2013 American Community Survey 3-Year Estimates dataset on October 23, 2014 and the 2009-2013 American Community Survey 5-Year Estimates dataset on December 4, 2014. The 2009-2013 DOJ special tabulation block group citizenship estimates by race and ethnicity will be released in January 2015.

Source: http://www.census.gov/acs/www/data_documentation/2013_release_schedule/

The 1-year ACS estimate is thus the most recent available data. This dataset does have a wider margin of error than the 3-year and 5-year estimates. For a city with a relatively small population such as Yakima, we can expect that year-over-year ACS 1-year estimates will show more variability than the multi-year surveys.

² The relevant 2013 ACS Yakima citizenship data can be retrieved from the Census Bureau's American FactFinder website via the links below (links for other years can be accessed by changing "ACS/13" to "ACS/12", etc.):

All persons:

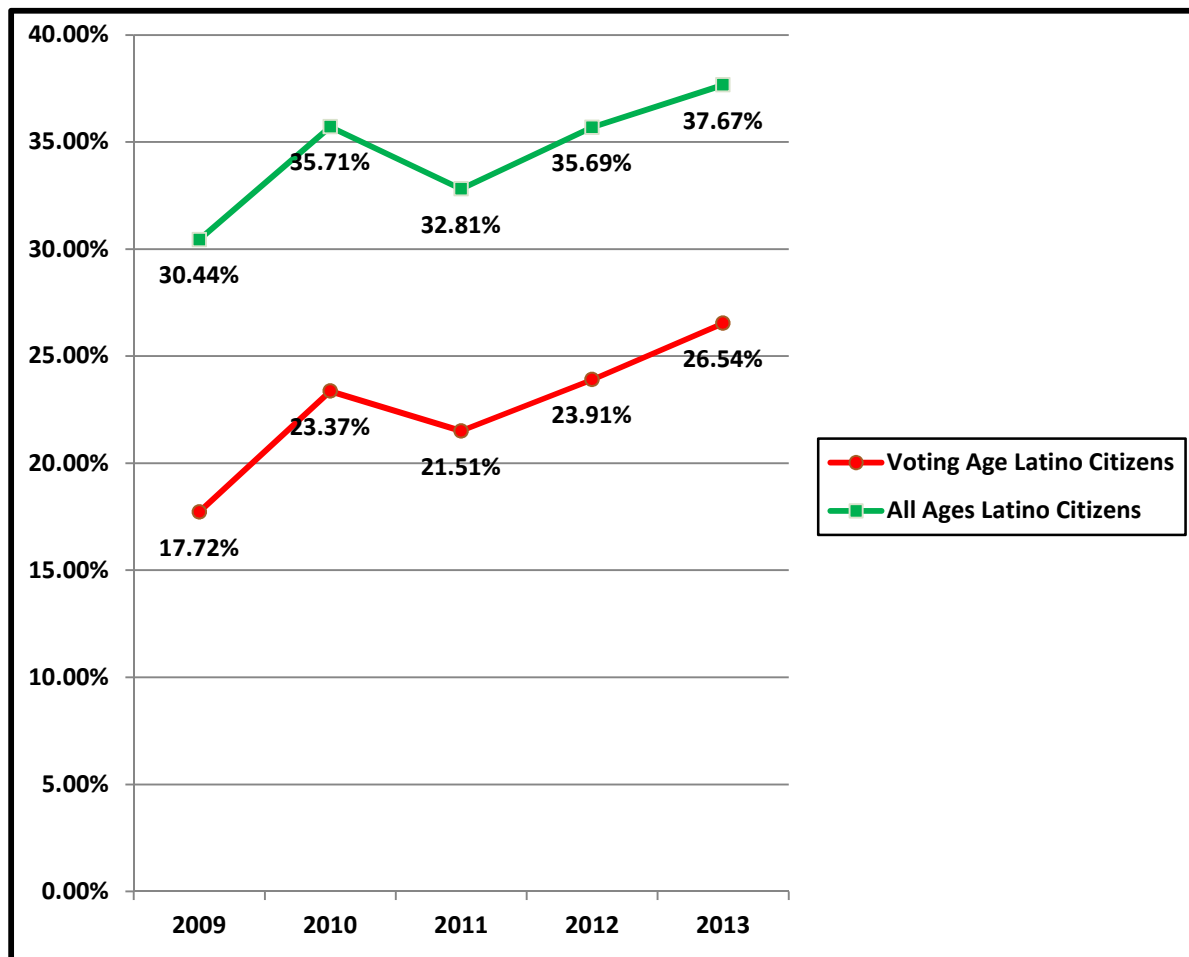
http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/13_1YR/B05003/1600000US5380010

Latinos:

http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/13_1YR/B05003I/1600000US5380010

The overall Latino citizenship percentage exhibits a similar pattern -- from a low of 30.44% in 2009 to 37.67% in 2013.

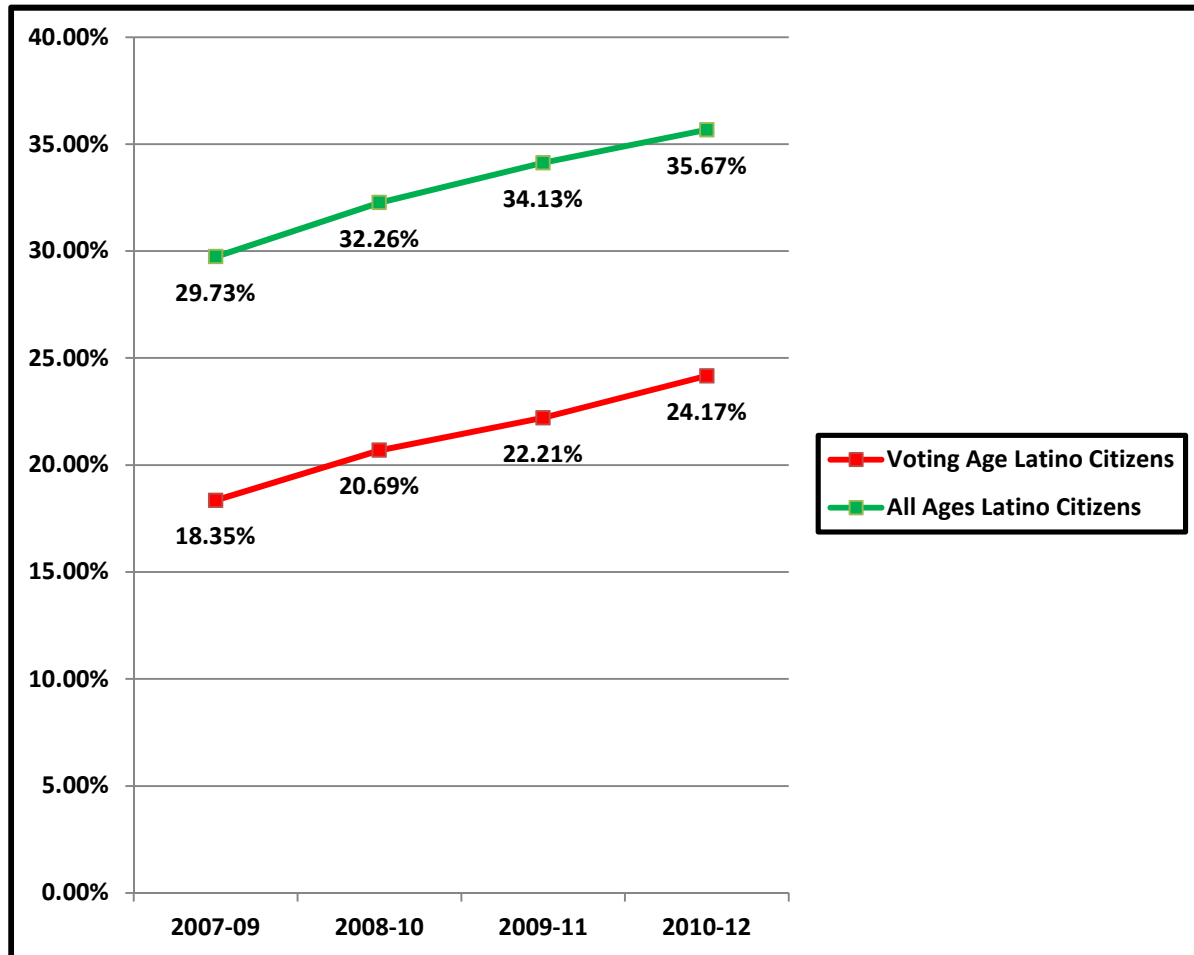
Figure 1-- Latinos as a Percent of Citizen Population – 2009 to 2013
1-Year ACS Estimates



5. It is clear that the uptrend in the LCVAP percentage should continue for the foreseeable future due to the demographic reality that Latinos in Yakima comprise over 60% of the under18 citizen population. According to the 1-year 2013 ACS, the citizenship rate of the under 18 Latino population is 98.02%.

6. For comparison, **Figure 2** shows Latino citizenship percentages reported in the 3-Year ACS beginning with the *2007-09 ACS* through the *2010-12 ACS*.

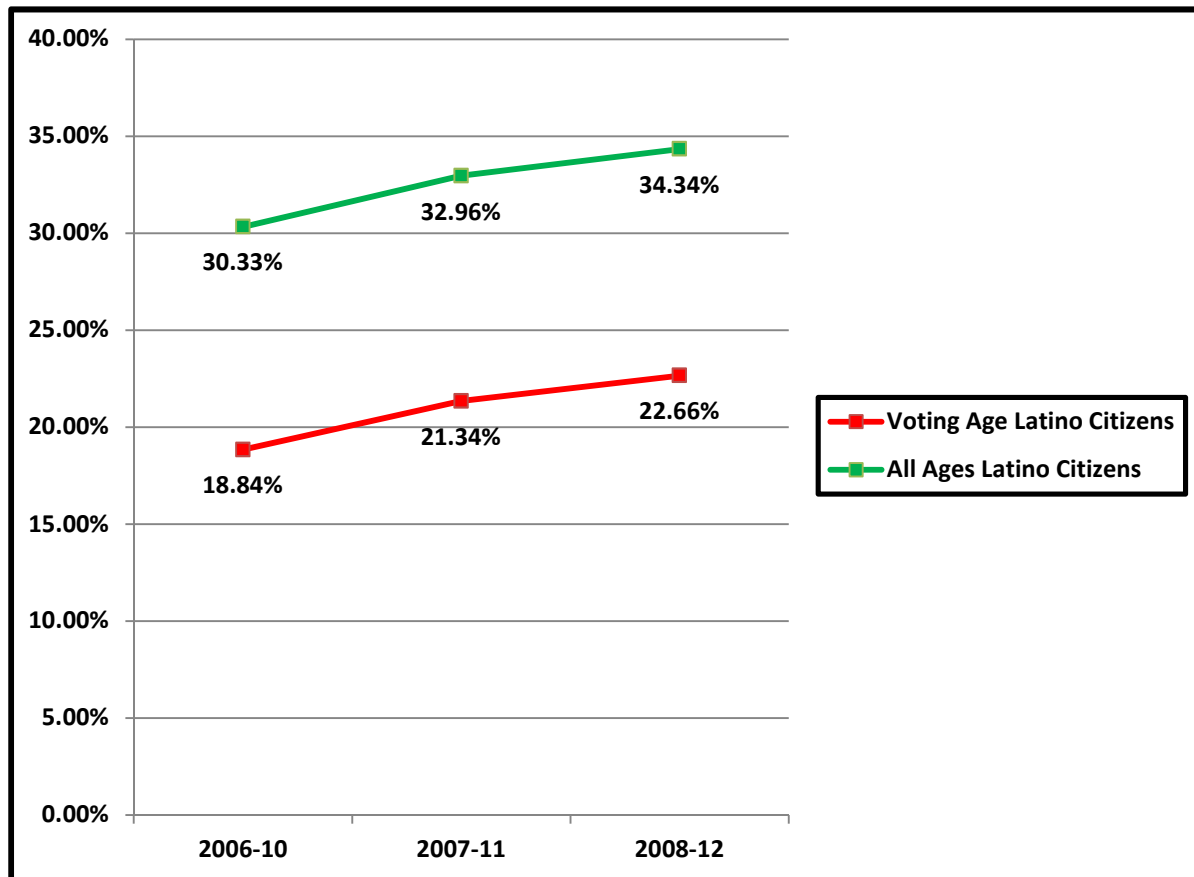
**Figure 2 Latinos as a Percent of Citizen Population – 2007-09 to 2010-12
3-Year ACS Estimates**



7. The four 3-year ACS periods displayed in **Figure 2** exhibit a consistent uptrend in Latino citizenship percentages across both categories – with the highest percentages recorded in the *2010-12 ACS*.

8. Citizenship statistics reported for the districts in my Illustrative and Hypothetical plans rely on 5-year ACS estimates at the block group level. **Figure 3** shows that citywide 5-year estimates also reveal a consistent uptrend for surveys over the 2006 to 2012 period.

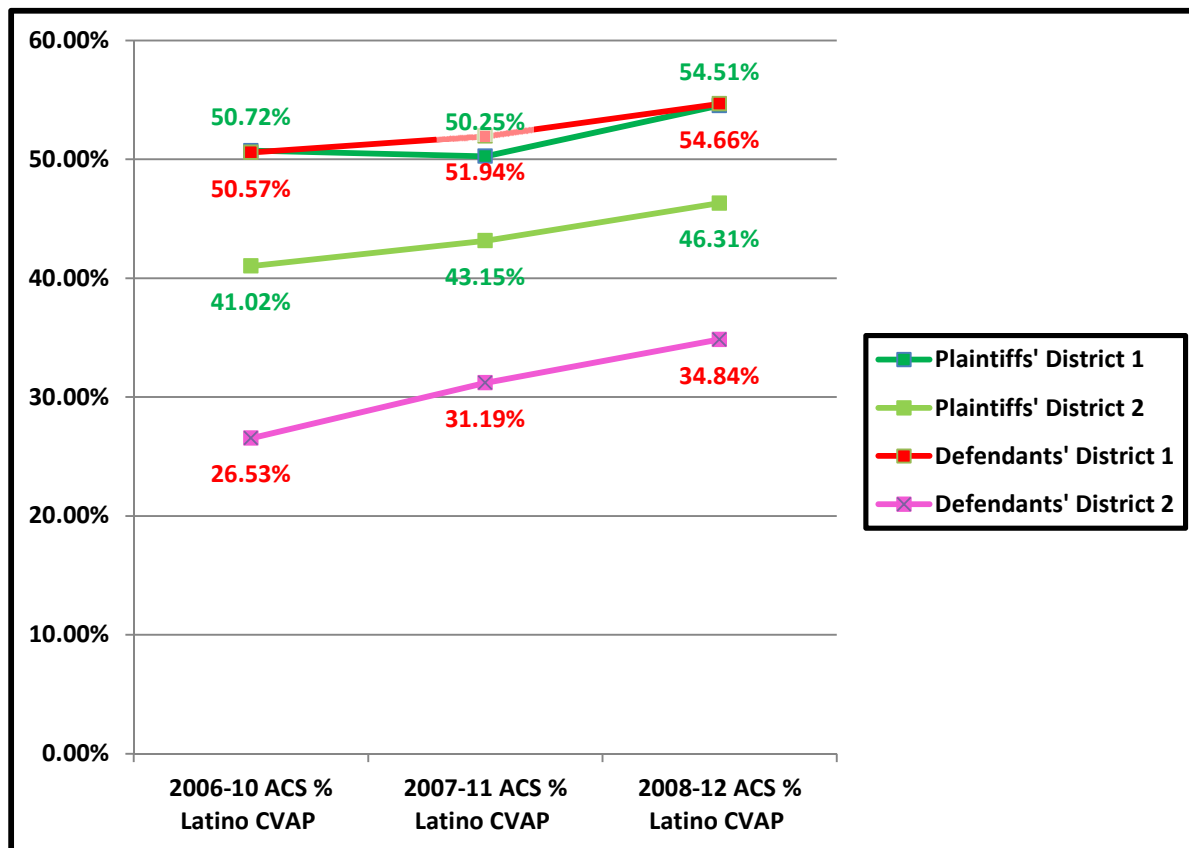
**Figure 3 Latinos as a Percent of Citizen Population – 2006-10 to 2008-12
5-Year ACS Estimates**



9. As shown in **Figure 4**, the citywide year-over-year uptrend in LCVAP is reflected in Districts 1 and 2 under both the Plaintiffs' Proposed Remedial Plan (identified in my previous reports as the Plaintiffs' Illustrative Plan 1, which

consists of seven single-member districts) and the Defendants' Proposed Remedial Plan (five single-member districts and 2 at-large).³

**Figure 4 Districts 1 and 2 LCVAP – Plaintiffs' and Defendants' Proposals
5-Year ACS Estimates -- 2006-10 to 2008-12**



10. The Plaintiffs' majority-LCVAP District 1 and Defendants' majority-LCVAP District 1 have nearly identical uptrend lines. Both the Plaintiffs' and the Defendants' District 2 show a similar uptrend pattern, but there is an 11.5 point gap

³ I recreated and analyzed the Defendants' Proposed Remedial Plan from the Defendants' shapefiles using *Maptitude for Redistricting*. A contiguity check with this software revealed that the Defendants' proposal has a non-contiguous 5-person census block (0011004021) erroneously assigned to District 2 instead of the geographically correct assignment to District 3.

in LCVAP based on the 2008-12 ACS – 46.31% under the Plaintiffs’ proposal versus 34.84% under the Defendants’ proposal.⁴

11. According to March 2014 voter registration statistics, Latinos already comprise a 53.35% majority of registered voters in District 2 under the Plaintiffs’ proposal. By contrast, the 32.98% Latino registered voter percentage in District 2 under the Defendants’ proposal is even lower than the 34.84% LCVAP in that district, resulting in a 20.4 point deficit of Latino registered voters compared to District 2 under the Plaintiffs’ proposal.

12. The Plaintiffs’ Proposed Remedial Plan gives Latinos a reasonable opportunity to elect their candidate of choice in Districts 1 and 2 because both districts have a majority of Latino voters. Plaintiffs’ District 2 is not LCVAP-

⁴ The calculations in **Figure 4** are based on Method 1, as described in my April 19, 2013 report. Comparable figures for Method 2 are shown in the table below:

Method 2 Statistics by District	2006-10 ACS % Latino CVAP	2007-11 ACS % Latino CVAP	2008-12 ACS % Latino CVAP
Plaintiffs' District 1	48.45%	48.31%	52.52%
Plaintiffs' District 2	40.17%	42.44%	45.35%
Defendants' District 1	49.05%	50.46%	53.46%
Defendants' District 2	27.22%	31.47%	35.45%

majority according to the 2008-12 ACS. But at 46.31% LCVAP, District 2 is on the cusp of LCVAP-majority status and may already be so.⁵

Conclusion

13. The preceding review of recent American Community Survey citizenship statistics suggests that the LCVAP will continue to increase citywide and in predominantly Latino east Yakima. The Plaintiffs' Proposed Remedial Plan is superior to the Defendants' Proposed Remedial Plan because it affords Latinos a current opportunity to elect their candidate of choice in two districts out of seven, while Defendants' 5-district, 2 at-large proposal would likely limit Latinos to a single seat on the Yakima City Council for many years to come.

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

Executed on: October 1, 2014



WILLIAM S. COOPER

⁵ A July 2014 5-year survey mid-point will occur in the 2012-16 ACS, which will not be available until the DOJ special tabulation release in January 2018.

EXHIBIT 4

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MANUEL A. BENAVIDEZ, JUANA
DE LEON, and DANIELA DELEON,

Plaintiffs

VS.

Civil Action No. 3:13-cv-0087-D

IRVING INDEPENDENT SCHOOL DISTRICT; STEPHEN CRAIG JONES, MARILYN GAIL CONDER WOODS WELLS, LARRY M. STIPES, VALERIE D. JONES, NORMA GONZALES, RANDY RANDLE, and LEE MOSTY, in their official capacities,

Defendants

EXPERT REPORT OF JOHN ALFORD, Ph.D.

I have been retained as an expert to provide analysis related to a Voting Rights Act challenge to the current at-large system for the election of school board members in the Pasadena Independent School District (PISD). My rate of compensation is \$250 per hour. I am a tenured associate professor of political science at Rice University. At Rice, I have taught courses on redistricting, elections, political representation, voting behavior, and statistical methods at both the undergraduate and graduate level. Over the last twenty-five years, I have worked with numerous local governments on districting plans and on Voting Rights Act issues. I have previously provided

expert reports and/or testified as an expert witness on voting rights and statistical issues in a variety of court cases, working for the U.S. Attorney in Houston, the Texas Attorney General, U.S. Congressmen, and various cities and school districts. In the 2001 round of redistricting, I was retained as an expert to provide advice to the Texas Attorney General in his role as Chair of the Legislative Redistricting Board. I subsequently served as the expert for the State of Texas in the state and federal litigation involving the 2001 redistricting for U.S. Congress, the Texas Senate, the Texas House of Representatives, and the Texas Board of Education. In 2011 I again worked as an expert for the State of Texas in the consolidated cases challenging the 2011 statewide redistricting, and in the State's Section 5 challenge in the DC Court. I also have worked as an expert in redistricting and voting rights cases in New Mexico, Mississippi, Wisconsin, Florida, and Alabama. The details of my academic background, including all publications in the last ten years and work as an expert, including all cases in which I have testified by deposition or at trial in the last four years, are covered in the attached vita (Appendix A).

In preparing this report I have relied on population data from the 2010 Census and election results provided publicly by Dallas County. I also utilized the expert provided by Bill Rives. I have also reviewed the expert reports of Mr. Ely and Professor Engstrom, as well as data and materials relied on in their reports and provided by them.

Irving ISD Elections

Ecological regression analysis is a technique commonly used in VRA lawsuits to assess voter cohesion and polarization. In a nutshell, regression is a mathematical technique for estimating the single best fitting straight line that could be drawn to describe the relationship between two variables in a scatter plot. Ecological regression is distinct from simple regression in that it relies on a data set made up of precinct level aggregations of voters and election results, rather than a data

set of individual voter characteristics and vote choices. This is necessary for the sort of analysis we wish to do here because while we have election results for groups of voters at the polling place level and can also estimate the demographic characteristics for the geography of the precinct, we do not have access to the actual vote choice of individual voters.

Applied to voting rights cases, the logic of regression analysis is to determine to what degree, if any, the vote for a candidate increases in a linear fashion as the concentration of voters of a given ethnicity in the precincts increases. The estimated coefficients for the intercept and for the slope form the estimated equation of the actual regression line, with the intercept defining the point at which the line crosses the vertical axis, and the slope indicating rise over run. More intuitively, the intercept tells us the predicted value of the dependent variable when the independent variable is equal to zero, or in this case the predicted share of the vote for the Hispanic candidate when the percent of actual voters with Spanish surnames in a precinct is zero. Similarly, the slope tells us the predicted change in the dependent variable for a one unit change in the independent variable, or in this case the predicted change in the vote for the Hispanic candidate for a one percentage point change in the percent of voters who have Spanish surnames in the precinct. By using the slope and the intercept we can compute an estimate for the vote for the Hispanic candidate when the percent of the voters in a precinct with Spanish surnames equals 100. This estimate is then an estimate of Hispanic (or at least Spanish surname) voting cohesion for the candidate. Similar procedures can be used to access non-Spanish surname (our proxy for non-Hispanic) voting cohesion.

Gary King's Ecological Inference (EI) procedure utilizes a method of bounds analysis, combined with a more traditional statistical method, to improve on standard ecological regression. While the details are mathematically complex, the differences mostly center on utilizing deterministic bounds information contained in individual precinct results that would not be exploited in ecological regression, and by not imposing a linear constraint on the pattern across

precincts. The combination of relaxing some assumptions and utilizing more information typically yields a more efficient estimation of cohesion and polarization when compared to standard ecological regression, though in practice the two different techniques seldom lead to any differences in the substantive conclusions.

Election Analysis Results

A replication of the election analysis reported by Professor Engstrom was performed, including the King's EI analysis that he reports and a standard Goodman's ER using the same election data. While there were the expected minor variations in estimated vote shares that are typically seen with these techniques, there were no substantive differences. To make it clear that the differences in the conclusions that I reach in no way depend on differences in the analysis, I will use the vote share estimates that Professor Engstrom provided in his analysis for the election discussion that follows.

Table 1

	EI from Engstrom Report		ER	
	Percent of Hispanics Supporting Candidate	Percent of Non-Hispanics Supporting Candidate	Percent of Hispanics Supporting Candidate	Percent of Non-Hispanics Supporting Candidate
2013, District 5				
Benavidez	58.0 (30.7-87.4)	9.0 (2.9-17.4)	54.4 (29.6-79.3)	9.8 (2.5-17.1)
2012, Place 4				
Gonzales	90.1 (59.9-100)	32.7 (28.3-37.7)	83.2 (61.24-105.16)	33.38 (28.94-37.82)
2012, Place 3				
Fernandez-Mott	87.8 (57.3-99.9)	13.6 (10-17.7)	83.05 (66.01-100.09)	14.04 (10.62-17.46)
2010, Place 5				
Portillo	91.5 (55.6-100)	15.0 (9.7-21.5)	82.16 (62.98-101.34)	17.38 (13.24-21.52)
2008, Place 2				
Chac	90.3 (50.6-98.5)	11.9 (9.1-17.3)	99.25 (82.13-116.37)	11.55 (7.71-15.39)
2008, Place 1				
Ponce	93.2 (68.2-99.2)	7.5 (5.3 – 11.1)	100.63 (90.29-110.97)	7.25 (4.93-9.57)
2006, Place 4				
Carranza	81.4 (38.5-98.3)	11.7 (9.2 – 15.0)	63.46 (23.7-103.22)	12.3 (8.76-15.84)
2006 Place 3				
Benavidez	93.0 (59.1 – 99.5)	10.9 (6.5-15.6)	97.9 (60.62-135.18)	11.47 (8.15-14.79)

Ely and Engstrom Reports

The central problem with the reports of Mr. Ely and Dr. Engstrom is not as much with the evidence they present as it is with the conclusions they reach. Most of the discussion would be more appropriate to a challenge to the old pure at-large system of elections in Irving ISD. Mr. Ely concludes that it is possible to draw a single district in the ISD with a citizen voting age Hispanic majority. Dr. Engstrom concludes that in the old pure at-large system Hispanic voters cohesively favored various Hispanic candidates, while an estimated majority of Anglo voters did not favor those Hispanic candidates. Taken together, the conclusions of Mr. Ely and Dr. Engstrom offer a plausible rationale for the decision of Irving ISD to abandon the old pure at-large election system (0-7 system) in favor of the new mixed system with five single member districted seats and two at-large seats (5-2 system) first used in the 2013 elections.

It is this new election system, with five single member districts, that is at issue here. One of the districts in that plan, District 6, was drawn to include an area of concentrated Hispanic population, and according to Mr. Ely the 2007-2011 ACS data indicates that 47% of the adult citizens in District 6 were Hispanic. In the 2013 elections District 6 elected Norma Gonzales to the Irving ISD school board. Ms. Gonzales was unopposed in the 2013 election, but when she ran for an at-large seat the previous year she was, according to Dr. Engstrom, the preferred candidate of Hispanic voters with an estimated share of over 90% of the Hispanic vote, and no Hispanic challenged her in the new District 6. Thus the new mixed system with five single member seats produced the election of a board on which one of seven members is both Hispanic and has recently been shown to be the preferred candidate of Hispanic voters.

Mr. Ely offers three ‘illustrative’ districts to demonstrate that it would be possible to create one majority adult Hispanic citizen district if the election system in Irving ISD were replaced with a seven single member district system. These are the sort of ‘illustrative’ or ‘demonstration’ districts

that are typically presented by plaintiffs to meet the first prong of the Gingles test, and indeed are very much like those provided by Mr. Ely in the earlier challenge to the all at-large system of elections in Irving ISD. The demonstration of a potential citizen majority district is critical in such a challenge, as it is a threshold test that must be met to prevail, but it is not a requirement in a remedy district, and indeed it is not uncommon for remedy districts to have minority adult citizen proportions below majority.

Dr. Engstrom provides analysis of estimated voting patterns in eight Irving ISD elections, seven of which were held under the old pure at-large system. The one election from the current election system that he examined was not the election for the Hispanic single member district, but was instead for one of the four other more heavily Anglo seats. When a single member system district plan incorporates one district with a concentration of minority population, it is axiomatic that the result will be to reduce minority influence and electoral success in the remaining less minority districts. The concentration of Hispanic population in District 6 of the current Irving ISD plan was intended to allow a candidate like Ms. Gonzales to be elected to the school board, which it did in the first election held for that seat. The recognized cost of that concentration in District 6 was that the remaining four single member districts would be less likely to elect a Hispanic candidate of choice, and certainly we would not expect one of those four districts to elect a candidate like Mr. Benavides who only had the support of 58% of the Hispanic voters in the district.

The current 5-2 system produced the election of a Hispanic candidate of choice in the district that was drawn to contain the area of greatest Hispanic concentration. Mr. Ely does not offer to improve on that performance as he also proposes only one Hispanic district out of seven, but instead the implication seems to be that a district with a slightly higher Hispanic concentration is crucial. The simple fact that a slightly more concentrated district is possible is in itself of no consequence. There is no legal requirement to draw the most concentrated minority district

possible, nor is there any legal requirement to draw districts where minorities make up a majority of adult citizens or a majority of registered voters. The key question is whether the districts provided by Mr. Ely will redress a functional failure inherent in the existing district plan.

The most obvious way that Plaintiffs could demonstrate that a seven single member district plan might be superior for Hispanic representation to the five single member district plan, would be to show that the seven member plan would offer an increase in the number of districts expected to elect Hispanic candidates of choice. That is not demonstrated here, where the number of Hispanic opportunity districts is constant at one in both systems.

That leaves the question of whether any one of Mr. Ely's illustrative districts cures a substantive failing in existing District 6. The first point to note here is that the existing 5-2 system has already produced the election of a Hispanic to the board, and given the limited history, has never failed to do so. But looking beyond the fact of performance, it is also clear that the districts offered by Mr. Ely are not as different from existing District 6 as plaintiffs suggest. Much is made of reaching a Hispanic citizen voting age majority in the three Ely districts, but District 6 is in all likelihood also currently a Hispanic citizen voting age majority district. Applying Mr. Ely's growth trends would yield this result today, and it is almost a certainty that by the time the next elections are held in District 6 in 2016 the district will be well above 50% Hispanic among adult citizens. The current estimate is, after all, based on data that is already two to seven years old, and by 2016 will be five to ten years old.

Looking at Spanish surname registered voter (SSRV) proportions also suggests that Mr. Ely's districts are not really much different than existing District 6. A comparison of information from Mr. Ely's Table 2 (for current District 6) and his Table 3 (for his three illustrative districts) is instructive and is summarized below in Table 2 for convenience. The proportion of Spanish

surname registered voters in Mr. Ely's illustrative district A is 38.0%. In comparison District 6 has a very similar, even slightly higher proportion SSRV at 38.2%.

Illustrative districts B and C were both drawn according to Mr. Ely specifically to boost the proportion of SSRV. Mr. Ely doesn't explain what the legal or political magic of reaching exactly 50.0% SSRV is, but that aside, these two districts are instructive. Comparing illustrative district A (38.0% SSRV) to illustrative district B (50.0%), we can see that despite the increase in proportion, the actual number of registered voters with Spanish surnames does not increase, in fact it drops by 31. Likewise the Hispanic adult citizen levels also fall, both the proportion (from 56.9% to 56.5%) and more dramatically the raw number (from 4953 to 4004). How does Mr. Ely accomplish the increase in the proportion of SSVR in illustrative B while actually reducing the number of registered voters with Spanish surnames? - by packing illustrative B with non-citizens. Illustrative A has 6155 adult Hispanics that are not citizens, compared to 8304 non-citizen adult Hispanics in illustrative B, an increase of over 2100 persons (a 35% increase). A similar pattern is also evident in a comparison of illustrative district C to illustrative district A.

Table 2

	Dist 6	A	B	C
Population	33211	24636	24190	24386
Hispanic Population	25089	17852	19794	19424
% Hispanic Pop.	75.5%	72.5%	81.8%	79.7%
Voting Age Pop. (VAP)	22091	16555	15787	16078
Hispanic Voting Age Pop.	15554	11108	12308	12095
% Hispanic Voting Age Pop.	70.4%	67.1%	78.0%	75.2%
Citizen Voting Age Pop.	10823	8711	7089	7762
Hispanic Citizen VAP	5076	4953	4004	4084
% Hispanic Citizen VAP	46.9%	56.9%	56.5%	52.6%
Registered Voters (2013)	7664	6947	5216	5557
Spanish Surname Register Voters	2929	2639	2608	2642
% Spanish Surname Register Voters	38.2%	38.0%	50.0%	47.5%

Illustrative district A purports to be an improvement over existing District 6 because it boosts the Hispanic adult citizen proportion by a few percentage points, but it actually reduces slightly the proportion of Spanish surname voters. Illustrative districts B and C offer an increase in the proportion of Spanish surname registered voters, but achieve this increase not by the incorporation of more Spanish surname registered voters. Instead, these districts are packed with non-citizens to increase the voting power of the similar number of Spanish surname registered voters as were contained in illustrative district A.

In all three of the illustrative districts more than 80% of the Hispanic registered voters live outside of the proposed district. The same is true of District 6 in the existing 5-2 plan, but the difference is that in the existing plan the Hispanic voters outside of District 6, along with those inside District 6, are still represented by both of the two at-large members, and participate in the elections for both of these seats. The proposed 7-0 all single member system eliminates this shared ISD –wide representation without offering any additional single member seats beyond the existing one seat already present in the current 5-2 plan.

Existing District 6 elected a Hispanic to the school board in its only election to date. Ms. Gonzales was unopposed in that contest, but Dr. Engstrom demonstrates that the year before, she was the overwhelming favorite among Hispanic voters in her 2012 at-large contest. In that sense the current 5-2 plan has never failed to work as designed. The plaintiffs' experts provide no analysis to demonstrate that any of their three illustrative districts would be a functional improvement over existing District 6. Simply arguing that a plan with more seats is on its face better is not persuasive. The single member plan adopted by the City of Irving for its 2010 elections included six single member districts, one more than the current Irving ISD plan, but the majority Hispanic district (District 1 configured in a way similar to Mr. Ely's illustrative district B) did not elect the Hispanic candidate in that election. The district was reconfigured following the 2010 census, and in the redrawn district neither of the two Hispanic candidates in the four-way contest for the seat in 2013 even made the runoff.

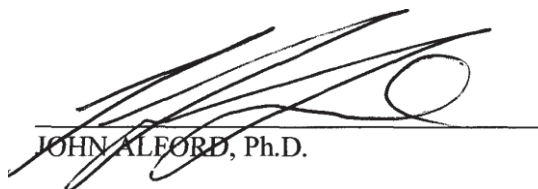
Conclusions

In the current election configuration Irving ISD has five single member seats and two at-large seats. One of the five single member seats, District 6, was drawn to contain an area of Hispanic concentration with a 2010 voting age population that was over 70% Hispanic. In the first election for District 6 in 2013 a Hispanic candidate, Norma Gonzales, who was the preference of

over 90% of Hispanic voters in her 2012 run for an at-large seat, was elected running unopposed and is the current council representative for District 6. Plaintiffs argue that the 5-2 system is illegal and that the court should order the school district to replace that system with a 7-0 all single member system.

Mr. Ely and Dr. Engstrom in their expert reports provide support for the notion that an all at-large election system would be problematic for minority representation, and that it is possible to draw one single member seat where a Hispanic candidate of choice could be elected. This is exactly what the current 5-2 system appears to have done, and they do not offer any analysis to suggest otherwise. Moreover, they do not demonstrate that moving to a 7-0 system would provide anything beyond the one single member Hispanic seat already provided by the existing 5-2 system.

What they offer instead is three illustrative districts that they suggest would improve on existing District 6. The first, illustrative district A, focuses on boosting the proportion of Hispanics among the adult citizen population, but in the process actually reduces the proportion of registered voters in the district with Spanish surnames compared to District 6. The other two illustrative districts were constructed to maximize the proportion of Spanish surname registered voters, but this boost is achieved not by adding Hispanic registered voters, but instead by inflating their voting power by increasing the proportion of non-citizens in the district. Whatever the propriety of these options, neither Mr. Ely nor Dr. Engstrom offers any analysis to connect these modest proposed changes in district demographics to any improvement, however modest, in the functional performance of the district.



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