

1 facto executive sessions, by repeatedly taking actions and final actions and
2 conferring in private, by “straw polling”, and by conducting an illegal series of
3 seriatim meetings and by staging a *sudden, deliberate, unprovoked and dastardly*
4 *attack* on the People’s right to notice under the OPMA of matters concerning
5 voting rights.

6 **1.3.** The defendants also created a “Phantom Menace” to our electoral
7 system by acting, in the absence of any pretense of compliance with their enabling
8 legislation and the OPMA, to unlawfully and secretly take action to approve both
9 “phantom” redistricting maps on November 15 and, subsequently, actual maps on
10 November 16, after the date that they were authorized to do so under the State
11 Constitution and the Laws of the State of Washington, and by filing a false
12 instrument with the Legislature falsely attesting to their timely adoption of
13 redistricting maps, and plaintiff is entitled to the relief sought below.

14 **II. PARTIES AND JURISDICTION**

15 **2.1.** Plaintiff West is “any person” as defined in RCW 42.30.130 with
16 standing¹ to seek relief. West is also a registered voter with standing to enforce
17 procedural checks and balances in the electoral system.

18 **2.2.** Defendant Washington State Redistricting Commissioners constitute a
19 “governing body” as defined in RCW 42.30.020 that has violated the Open Public
20 Meetings Act by conducting unlawful secret meetings, and by failing to deliberate
21 in public.

22 **2.3.** Defendants Brady Walkinshaw, Joe Fain, April Sims, Paul Graves, and
23 Sarah Augustine are members of the Washington State Redistricting Commission,

¹ See *West v. Seattle Port Commission*, 194 Wn. App. 821, 380 P.3d 82 (2016), *West v. Pierce County Council*, 197 Wn. App. 895, 391 P.3d 592 (2017).

1 required by the express terms of RCW 44.05.080(4)² to hold open meetings
2 pursuant to the Open Public Meetings Act. On November 15, and 16, 2021³, the
3 commissioners, and each of them violated the OPMA by conducting a series
4 unlawful executive sessions and actual and serial meetings, by knowingly and
5 deliberately conducting deliberations behind closed doors and by taking “actions”
6 and “final actions” outside the context of properly noticed and scheduled open
7 public meetings⁴.

8 **2.4.** Defendant Washington State Redistricting Commission is an entity
9 required to abide by the requirements of Article II, section 43 of the Constitution of
10 the State of Washington, Chapter 16 of the Laws of the State of Washington, 1983,
11 and the Open Public Meetings Act, RCW 42.30.

12 **2.5.** The State of Washington is a necessary party to this action.

13 **2.6.** The Thurston County Superior Court has jurisdiction over the parties
14 and subject matter of this claim.

15 **III. ALLEGATIONS**

16 **3.1.** On Monday, November 15, 2021, between 7:00 P.M and 11:59:59, the
17 Washington State Redistricting Commission Commissioners held a five-hour
18 session.

19 **3.2.** Journalists, activists, and observers eagerly tuned in to the electronic
7:00 PM meeting being broadcast on TVW and YouTube, expecting to see the
commissioners finally huddle in public and attempt to finish up their work.

² RCW 44.05.080 provides: In addition to other duties prescribed by law, the commission shall:... (4) Hold open meetings pursuant to the open public meetings act, chapter 42.30 RCW;...

³ Dates which will live in infamy.

⁴ See *Egan v. City of Seattle*, 14 Wash. App. 2d 594, 471 P.3d 899, (2020)

1 **3.3.** However, of the entire 5 hours, only 41 minutes was actually open to the
2 public, as the Commission repeatedly illegally closed the meeting to engage in
secret deliberations in violation of the OPMA.

3 **3.4.** Instead, what viewers saw for the vast majority of nearly five hours was
4 a “Meeting on Break” message, with commission staff claiming to reporters like
5 Crosscut’s Melissa Santos that the commissioners were meeting in “caucus dyads”
— partisan (Democratic and Republican) groups of two.

6 **3.5.** Less than 2 minutes into the “public meeting” it was suspended for
secret deliberation by the Commissioners, the first of many such suspensions.

7 **3.6.** As the hours went by with nothing but occasional cameos from the staff
8 and commissioners, it became apparent that the Commission would not finish its
9 work before the eleventh hour, and possibly not at all. By 11:30 PM, the
10 commissioners had still not begun any meaningful discussion in public on any set
11 of proposals, despite having been publicly placed on notice in no uncertain terms
that their actions violated the OPMA.

12 **3.7.** With a few minutes left to go before midnight, the commissioners
13 belatedly appeared together onscreen once more, with nonvoting Chair Sarah
Augustine asking them if they wanted to “commence” discussions.

14 **3.8.** An almost nonsensical exchange then ensued, followed by yet another
15 “caucus dyad” break, followed by a chaotic final few minutes in which Augustine
quickly entertained a set of motions that commissioners unanimously approved.

16 **3.9.** Two of the motions were to supposedly adopt new legislative and
congressional district maps — phantom legislative and congressional maps, that is.

17 **3.10.** The “approved” maps were “phantoms” because it was evident that no
18 actual negotiated final maps existed for the commissioners to consider or approve,
19 not even in digital form. In the absence of such maps, the commissioners suggested

1 their final maps would be ready by sometime this morning, well after the deadline
2 had passed, perhaps by "sunrise."

3 **3.11.** The other motions adopted by the commissioners around midnight
4 were to approve a resolution and letter of transmittal to the Legislature of the
5 phantom maps.

6 **3.12.** No documents were shown onscreen prior to or during the votes, and
7 no documents were posted by the commission immediately following the meeting.
8 No discussion followed the votes, either. Instead, Ms. Augustine abruptly
9 adjourned the meeting, leaving the People, and the Supreme Court, (See appended,
10 Exhibit I) wondering what had just happened.

11 **3.13.** by so acting the defendants conducted a series of unlawful "meetings"
12 where "action" as defined in the OPMA took place, repeatedly and unlawfully
13 closed their meetings without compliance with the requirements of a lawful
14 executive session, and proceeded to conduct a series of secret back room cabals to
15 take action, conduct "straw polling" and to come to a clandestine agreement to
16 approve phantom maps to allow them to set new redistricting maps in secret, after
17 the deadline had passed.

18 **3.14.** The Washington State Redistricting Commission and each of the
19 Commissioners knowingly committed multiple violations of the OPMA by
20 repeatedly closing the November 15 open meeting and in subsequently conducting
21 what was, in essence, a series of unlawful de facto executive sessions and a series
22 of secret actual and seriatim meetings where actions were covertly taken in the
23 absence of proper notice or other lawful compliance with the OPMA throughout
24 November 16.

25 **3.15.** The fact that the proceedings to adopt the "phantom" maps were in
26 violation of the OPMA was underscored by the comments of a commission

1 spokesperson that "Due to the late hour of approval of the required documents to
2 meet the statutory deadline, the Commission is unsure when/if maps will be made
3 available to the public," "We will inform the public further as circumstances
warrant," the Commission's spokesperson added.

4 **3.16.** Subsequently, throughout the morning, afternoon, and evening of
5 November 16th the Commission abandoned any pretense of complying with the
6 OPMA, and continued to meet, confer and take "actions" and "final actions" in
7 deliberate and flagrant violation of the Open Public Meetings Act and other
8 provisions of State and Constitutional Law.

9 **3.17.** One possible reason for the secrecy and the "Phantom Menace" maps
10 became apparent on the morning of the 16th, when the Commissioners, and each of
11 them actually were so bold as to apparently violate RCW 40.16.020⁵ and RCW
12 40.16.030⁶ by filing a false and fraudulent instrument with the State Legislature
13 (See appended, Exhibit II) attesting to the circumstance that the "phantom" maps
14 the Commission had spuriously approved on November 15 were actually specific
15 redistricting maps lawfully adopted prior to the 12:00 Deadline, when they knew
16 this to be false. Certainly, the Commissioners' good faith zeal to achieve their goal,
the legislative background of 3 out of 4 of the voting Commissioners, and their
evident lack of the services of competent legal counsel all combine to strongly
indicate that these actions were the result of benign partisan ignorance⁷ rather than
malicious criminal intent, but the fact remains that a blatantly false and fraudulent
instrument was filed with the Legislature by the Commission attesting to the timely

17 ⁵ RCW 40.16.020 provides: Every officer who shall... falsify any record or paper appertaining to the officer's
office,... is guilty of a class B felony...

18 ⁶ RCW 40.16.030 provides: Every person who shall knowingly procure or offer any false or forged instrument to be
filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded
in such office under any law of this state or of the United States, is guilty of a class C felony...

19 ⁷ See, E. g. *When I Was a Lad*, Arthur Sullivan and W. S. Gilbert, 1877, "I grew so rich that I was sent
By a pocket borough into Parliament. I always voted at my party's call, And I never thought of thinking for myself at
all.

1 performance of a statutory and constitutional duty which was not, in fact,
2 performed.

3 **3.18.** The falsity of the Commissioners' filing with the Legislature is
4 demonstrated by their subsequent communication to the Supreme Court, (See
5 appended, Exhibit III) sent the evening of November 16 after a further deliberate
6 series of illegal private meetings, votes and final actions, which belatedly admitted
7 that the Commission failed to adopt redistricting maps before the deadline, and
8 which included secretly adopted late redistricting maps that the Commission urged
9 the Supreme Court to adopt, nevertheless.

10 **3.19.** Needless to say, the particular mixture of political farce and tragedy⁸
11 staged by the Commission did not exactly play to rave reviews, as their actions
12 were roundly excoriated by observers from all across the political spectrum.

13 **3.20.** Mellissa Santos, who had challenged the Commission on its lack of
14 compliance with the OPMA at the November 15 meeting, wrote an article for
15 Crosscut entitled "New WA political maps a mystery after final redistricting
16 meeting".

17 **3.21.** Daniel Walters of the Spokane Inlander wrote under the headline "11
18 reasons the Washington State Redistricting Commission turned into a deadline-
19 botching fiasco" that: As the clock chimed midnight to end Nov. 15, the
redistricting commissioners, after conducting intense negotiations in private over
proposals the public hadn't seen, were voting on a plan that may or may not have
been legal in support of redistricting maps that didn't actually yet exist.

3.22. The Spokesman review reported under the headline "Washington
redistricting commission admits it failed to meet deadline; questions on what
happened in final hours remain" that: According to the law, public voting bodies

⁸ A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. James Madison letter to W. T. Barry, August 4th, 1822.

1 can go behind closed doors for only select reasons, such as personnel matters, legal
2 issues or security concerns. The commissioners did not explain how the mostly-
3 private meetings complied with the Open Public Meetings Act, and quoted Juli
4 Bunting, executive director of the Washington Coalition for Open Government,
5 who observed it appears that the commission "very blatantly" violated the Open
6 Public Meetings Act. She said while she is not an attorney, if someone took the
7 commission to court over it, "it's a pretty egregious violation for such an important
8 task." She called it "a slap in the face." "Any time a public government entity
9 violates that law, it's a violation of the public trust," she said.

10 **3.23.** The Seattle Times noted that: "In addition to failing to complete their
11 task by the deadline, the commissioners' conduct likely violated the state's Open
12 Public Meetings Act, which generally requires governing bodies of public agencies
13 to make decisions in public", according to transparency advocates, quoting Mike
14 Fancher, president of the Washington Coalition for Open Government to the effect
15 that: "It clearly seems as if this was a deliberate attempt to essentially hide the
16 discussions from the public,"; Pierce County Councilmember Derek
17 Young, stating: "If a local government did anything like this the Legislature would
18 spend months scolding every city and county across the state for months. This is a
19 complete joke," and Andrew Villeneuve, founder of the Northwest Progressive
Institute, who observed that: "(T)he Commission failed to do the public's work in
public and didn't even accomplish its objectives in private. Instead of owning that
failure as the final seconds ticked by, the Commission seemingly tried to buy itself
more time to produce something by indefensibly voting to adopt maps that the
commissioners knew did not exist."

18 **3.24.** Not to be outdone, the Chief Justice of the Supreme Court, in an
19 extraordinary and unprecedented sua sponte order of November 18

1 observed: WHEREAS it is unclear what actions the commission took prior to
2 midnight on November 15, 2021;... and...WHEREAS it is unclear what actions the
3 commission took after midnight on November 15, 2021...

4 **3.25.** These uniformly and exceptionally negative reviews indicate that not
5 only did the Commission fail to perform its statutory and constitutional duties, it
6 produced a spectacle of unparalleled and transcendental bungling, the accurate
7 description of which strains the lexicon of ordinary garden-variety political
8 imbroglio or fiasco. Indeed, the general consensus strongly suggests that the
9 commission's epic performance was so unique as to beggar ordinary means of
10 description other than by comparison to the similarly unique and transcendental
11 operatic performances of the incomparable Coloratura Florence Foster Jenkins.⁹

12 **3.26.** By their actions and omissions, Washington State Redistricting
13 Commission Commissioners knowingly and deliberately violated the law, in a
14 *sneak attack* on the People's right to notice under the Open Public Meetings Act
15 and their rights to the adoption of legitimate redistricting maps in accord with the
16 Constitution and Laws of the United States and the State of Washington.

17 **3.27.** These violations are especially egregious in that they present a
18 "Phantom Menace" to the checks and balances of our electoral process and voting
19 rights, matters critical to the sound functioning of a democratic republic.

⁹ Time magazine wrote in 1944: "Critics have long wondered whether Coloratura Jenkins' art can be described as singing at all. But she will intrepidly attack any aria, scale its altitudes in great swoops and hoots, assay its descending trills with the vigor of a maudlin cuckoo." In the back of the hall men and women in full evening dress made no attempt to control their laughter. Dignified gentlemen sat with handkerchiefs stuffed in their mouths and tears of mirth streaming down their cheeks. But Mrs. Jenkins went bravely on. "There's no way to even pedagogically discuss it," said vocal instructor Bill Schuman. "It's amazing that she's even attempting to sing that music." The opera impresario Ira Siff, who dubbed her "the anti-Callas" said, "Jenkins was exquisitely bad, so bad that it added up to quite a good evening of theater ... She would stray from the original music, and do insightful and instinctual things with her voice, but in a terribly distorted way. There was no end to the horribleness ... They say Cole Porter had to bang his cane into his foot in order not to laugh out loud when she sang. She was that bad." Nevertheless, Porter rarely missed a recital "[Mrs. Jenkins] has a great voice", wrote the *New York Sun* critic. "In fact, she can sing everything except notes ... Much of her singing was hopelessly lacking in a semblance of pitch, but the further a note was from its proper elevation the more the audience laughed and applauded." The *New York Post* (like Pierce County Councilmember Young) was even less charitable: "Lady Florence ... indulged last night in one of the weirdest mass jokes New York has ever seen."

1 **3.28.** By meeting and acting in secret to come to an agreement as to how
2 they would vote, by conducting secret “straw polls”, by filing a false instrument
3 with the State Legislature, and by subsequently approving redistricting maps on
4 November 16, outside of any pretext of a public process, the Commission
5 undermined the validity of their actions, and our democratic process as a whole,
6 and their actions should be declared void ab initio, vacated, and set aside.

7 **3.29.** A present case and controversy exists, subject to adjudication under the
8 Declaratory Judgments Act, concerning whether the Washington State
9 Redistricting Commission Commissioners may lawfully close their meetings to
10 confer in secret and come to agreement as to how they will vote in violation of the
11 People’s right to lawful executive sessions and other requirements under the
12 OPMA, whether they may certify results falsely to the Legislature, and as to
13 whether the product of deliberate violations of the law should even be considered
14 by the Supreme Court in the due discharge of its’ duties under the Constitution and
15 Laws.

16 **3.30.** Certainly, the Commission labored under significant handicaps:
17 heightened political polarization, a culture of “partisan trench warfare”, a newly
18 adopted abbreviated timeline, and complicated considerations under the Voting
19 Rights Act concerning appropriate representation of a diverse population in
Eastern Washington. However, the procedural checks and balances in our
redistricting system are not mere technicalities to be cast aside in the interest of
transient political expediency whenever the political breezes blow; instead, they
are necessary bulwarks that serve to safeguard the honesty and integrity of the
redistricting process and our electoral system by ensuring that any changes be
made through an open, honest, and legitimate public process subject to oversight
by the People in whose interest the districts are formed to begin with.

1 **3.31.** The defendants in this case deliberately sacrificed these basic
2 procedural safeguards in the interest of transient political expediency. In the
3 process, they created a "Phantom Menace" to the legitimacy of our electoral
4 system as a whole, with unknown implications in the event that someone elects to
5 challenge the final product of the redistricting when completed by Court. In the
6 interest of the legitimacy of the process, and the legitimacy of the redistricting
7 maps that will eventually be legally adopted, it is essential that aberrant actions of
8 the defendants in this case be declared null and void as quickly as possible so they
9 do not taint further proceedings and render them subject to challenge as the fruit of
10 the Commissioners' poisoned redistricting process.

11 **IV. CAUSES OF ACTION:**

12 **4.1. OPMA CLAIM**

13 By their acts and omissions defendants created a cause of action under RCW
14 42.30 for individual penalties, costs, fees, and injunctive relief in regard to
15 violations of the OPMA by a quorum of the governing body of the Washington
16 State Redistricting Commission, and plaintiff is entitled, under RCW 42.30, to the
17 relief sought below.

18 **4.2. UNIFORM DECLARATORY JUDGMENTS ACT (RCW 7.24)**

19 By their acts and omissions defendants, and each of them, created an
uncertainty in the conduct of public officers and compliance with the OPMA and
Title 16.40 RCW, and a cause of action for a declaratory judgment in regard to
whether the Washington State Redistricting Commission Commissioners can
evade the requirements of the OPMA by deliberating in secret and by holding
unlawful de facto executive sessions, whether they knowingly violated the OPMA

1 on November 15 and 16, 2021¹⁰, rendering their redistricting maps void ab initio,
2 and as to whether they filed a false instrument with the Legislature on November
3 16. Such a declaration would resolve the uncertainty giving rise to this action, and
4 would go a long way to ensure that this particular farcical form of violation will
5 never recur.

6 **V REQUEST FOR RELIEF**

7 Wherefore, Plaintiff respectfully requests the following relief:

8 **5.1.** That the November 15 “Phantom Menace” maps and the November 16
9 actual redistricting maps illegally adopted by the Commission without any pretense
10 of compliance with the OPMA or their enabling legislation be declared void ab
11 initio.

12 **5.2.** That preliminary and permanent injunctive relief be issued enjoining
13 defendants from further publication of their void November 16 maps, from further
14 filing of false instruments with the Legislature, and from conducting any further
15 news conferences or communications representing the maps to be a lawful product
16 of the Commission, or urging that the Commission’s unlawful November 16 maps
17 be adopted by the Supreme Court.

18 **5.3.** That a ruling issue under the Seal of this Court finding and declaring
19 that Washington State Redistricting Commission Commissioners repeatedly and
deliberately violated the Open Public Meetings Act on November 15, and
November 16, 2021 by knowingly conducting a series of serial meetings, unlawful
de facto executive sessions, and by improperly taking “action” and “final action”
as defined in the OPMA, including deliberating and conducting a series of straw

¹⁰ Dates which will live in infamy.

1 polls and actual votes in secret, and by taking final actions and sending formal
2 communications on behalf of the Commission to the Legislature and Supreme
3 Court.

4 **5.4.** That a ruling issue under the Seal of this Court fining defendant
5 Washington State Redistricting Commission members Brady Walkinshaw, Joe
6 Fain, April Sims, Paul Graves, and Sarah Augustine \$500 for their first knowing
7 violation of the OPMA, and \$1000 for each violation thereafter, for as many
8 violations as may be established, and that an Order enter prohibiting such
9 violations in the future.

10 **5.5.** That in addition to the penalty above, plaintiff be awarded any
11 appropriate costs from the defendants for their failure to comply with the OPMA.

12 **5.6.** That the actions taken by the Commission on November 15 and
13 November 16, 2021 be invalidated and the new redistricting maps be set by the
14 Judiciary as required by law.

15 Done November 22, 2021, in Olympia, Washington.

16
17
18
19

Arthur West

THE SUPREME COURT OF WASHINGTON

ORDER REGARDING THE WASHINGTON)
STATE REDISTRICTING COMMISSION'S)
LETTER TO THE SUPREME COURT ON)
NOVEMBER 16, 2021)
)
)
)
)

ORDER
NO. 25700-B-675

WHEREAS, on November 16, 2021, the Executive Director of the Washington State Redistricting Commission sent a letter to the Supreme Court indicating that the Commission was “unable to adopt a districting plan by the midnight deadline” but that the commissioners “did agree on a framework for a redistricting plan” and that the “task is now done”;

WHEREAS, it is unclear what actions the commission took prior to midnight on November 15, 2021;

WHEREAS, it is unclear what actions the commission took after midnight on November 15, 2021;

NOW, THEREFORE, it is hereby

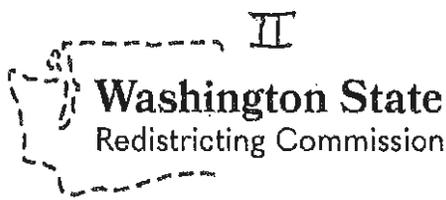
ORDERED:

That the Chair of the Redistricting Commission is directed to file a sworn declaration by noon on Monday, November 22, 2021, with a detailed timeline of the events of November 15, 2021, and November 16, 2021, relevant to the commission’s compliance with its obligations under article II, section 43 subsections (6) and (11) of the Washington State Constitution and

RCW 44.05.100. This should include the timing of any votes taken by the commission, exactly what each vote was regarding, and any other actions taken by the commission relevant to their constitutional and statutory obligations under article II, section 43 subsections (6) and 11 and RCW 44.05.100.

DATED at Olympia, Washington this 18th day of November, 2021.


CHIEF JUSTICE



November 15, 2021

The Honorable Andy Billig
Washington State Senate
PO BOX 40403
Olympia, Washington 98504

The Honorable Laurie Jinkins
Washington State House of Representatives
PO BOX 40600
Olympia, Washington 98504

The Honorable John Braun
Washington State Senate
PO BOX 40420
Olympia, Washington 98504

The Honorable J.T. Wilcox
Washington State House of Representatives
PO BOX 40600
Olympia, Washington 98504

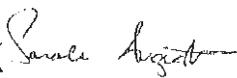
Dear Majority and Minority Leaders:

It is with great satisfaction and pride that the Washington State Redistricting Commission submits the final 2021 Washington State Redistricting Plan. The Commission adopted this plan for new legislative and congressional districts on November 15, 2021.

As Commissioners, we have memorialized approval of the final plan in the attached resolution and include with this transmission the shapefiles of the districts and written legal description of each district. The 2021 redistricting plan was drawn in accordance with Article II, § 43 of the State Constitution and RCW 44.05.090.

It has been a pleasure to serve on the 2021 Commission and an honor to take part in this truly bipartisan process on behalf of the people of Washington State.

Respectfully submitted,

X 

Sarah Augustine, Chair

X 

Brady Piñero Walkinshaw (Nov 16, 2021 00:11 PST)

Brady Piñero Walkinshaw, Commissioner

X 

April Sims (Nov 16, 2021 00:01 PST)

April Sims, Commissioner

X 

Joe Fain (Nov 16, 2021 00:01 PST)

Joe Fain, Commissioner

X 

Paul Graves (Nov 15, 2021 23:52 PST)

Paul Graves, Commissioner

cc: Brad Hendrickson, Secretary of the Senate
Bernard Dean, Chief Clerk, House of Representatives
Sarah Bannister, Deputy Secretary of the Senate
Melissa Palmer, Deputy Chief Clerk, House of Representatives

Final Transmittal Letter_11.15.2021

Final Audit Report

2021-11-16

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-  Document created by Maria Garza (Maria.Garza@redistricting.wa.gov)
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 Agreement completed.

2021-11-16 - 8:11:03 AM GMT



Final Commission Approved Maps

The four voting commissioners on the Washington State Redistricting Commission were unable to adopt a districting plan by the midnight deadline on November 15, 2021. They did, however, approve Congressional District and Legislative District maps and are making them available to the public. You can access the Commissioner's district maps below.

Approved Congressional District Map

Published November 16, 2021

Access files of the Commissioner approved Congressional district maps below.

Please note, this is not the final Congressional District map for Washington State. Pursuant to RCW 44.05.100 the Washington Supreme Court now has jurisdiction to adopt the final districting plan.

[PDF of Congressional District Map](#)

[Download CD Shapefiles](#)

Approved Legislative District Map

Published November 16, 2021

Access files of the Commissioner approved Legislative district maps below.

Please note, this is not the final Legislative District map for Washington State. Pursuant to RCW 44.05.100 the Washington Supreme Court now has jurisdiction to adopt the final districting plan.

[PDF of State Legislative Map](#)

[PDF of Metropolitan Areas](#)

[Legal Description of District Blocks](#)

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