

The Honorable Robert S. Lasnik

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

SUSAN SOTO PALMER, et al.,

Plaintiffs,

v.

STEVEN HOBBS, et al.,

Defendants.

NO. 3:22-cv-05035-RSL

DEFENDANT SECRETARY OF STATE
STEVEN HOBBS' RESPONSE TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

INTRODUCTION

Defendant Secretary Hobbs takes no position on whether Plaintiffs have demonstrated a likelihood of success on the merits of their Voting Rights Act claims. Dkt. # 40. Those claims are based on maps Secretary Hobbs did not draw, did not direct, and did not approve. He has no power to change the maps, and no power over the Redistricting Commission (Commission).

Nonetheless, it is Secretary Hobbs' responsibility, in partnership with county election officials, to ensure elections are well run and conducted in accordance with the law. Making that happen requires months of preparation before the first primary ballot is cast. Should the Court find that preliminary relief is warranted, therefore, Secretary Hobbs asks that such relief—including specific alternative maps for Legislative District 15 and all other affected districts—be ordered no later than March 28.

II. FACTUAL BACKGROUND

A. Overview of Redistricting Process in Washington

Since a constitutional amendment in 1983, redistricting for the state’s congressional and 49 state legislative districts has been conducted by a bipartisan commission. Wash. Const. art. II, § 43. The Washington Constitution does not assign the Secretary of State any role in the redistricting process. *Id.* (omitting Secretary from redistricting provision); *Id.* art. III, § 17 (omitting redistricting from provision on Secretary’s duties). The Speaker of the House, Senate Majority Leader, House Minority Leader, and Senate Minority Leader each appoint one commissioner, and the four appointed commissioners appoint a nonvoting chair. *Id.* art. II, § 43(2).

The Commission must complete redistricting and approve the redistricting plan by the vote of at least three commissioners before November 15 of the year following the census (here, November 15, 2021). *Id.* § 43(6). If the Commission fails to make that deadline, the state Supreme Court must adopt a plan. *Id.*

The redistricting plan requires no legislative adoption or enactment to take effect. The legislature may amend the redistricting plan by a two-thirds vote in each house, though any legislative amendment may not include more than two percent of the population of any legislative or congressional district. *Id.* § 43(7); Wash. Rev. Code § 44.05.100(2). Any amendment must take place within the first thirty days of the legislative session. Wash. Const. art. II, § 43(7). The legislature may also, by two-thirds vote in each house, reconvene the Commission for the purpose of modifying the districting law. *Id.* § 43(8); Wash. Rev. Code § 44.05.120(1).

By statute, the Commission ceases to exist on the July 1 following a redistricting year (here, July 1, 2022). Wash. Rev. Code § 44.05.110(2). Once that happens, the Secretary of State becomes custodian of the Commission’s official record, including “all relevant information developed by the commission pursuant to carrying out its duties under this chapter, maps, data

1 collected, minutes of meetings, written communications, and other information of a similar
2 nature.” *Id.*; *see also id.* § 44.05.020(1).

3 The Secretary’s statutorily prescribed role in the census and redistricting process is
4 primarily as a source of information before and during the census. Wash. Rev. Code
5 § 29A.76.040. The Secretary must: maintain official maps and correspondence lists and transmit
6 them to the Census Bureau as needed for the census; serve as state liaison to the Census Bureau;
7 and “coordinate and monitor” precinct mapping by county auditors. *Id.* The Secretary does not
8 draw or approve the redistricting plan.

9 After the 2020 federal census, the Redistricting Commission convened and completed
10 the redistricting plan by the constitutional deadline. *See* Order No. 25700-B-676, *Order*
11 *Regarding the Washington State Redistricting Commission’s Letter to the Supreme Court*
12 *on November 16, 2021 and the Commission Chair’s November 21, 2021, Declaration,*
13 *(Wash. Dec. 3, 2021).*¹ The Legislature enacted amendments to the plan in House Concurrent
14 Resolution 4407, 67th Leg., Reg. Sess. (Wash. 2022).²

15 **B. Elections Administration in Washington**

16 The Secretary and elections officers (typically county auditors) in Washington’s 39
17 counties share responsibility for overseeing elections. Wash. Rev. Code § 29A.04.216; *id.*
18 § 29A.04.230. Before elections, the counties register voters, draw precinct boundaries, accept
19 most candidate filings, and design, print, and mail ballots and voters’ pamphlets. *Id.*
20 § 29A.08.105(2) (registering voters); *id.* § 29A.16.040 (precincts); *id.* § 29A.24.070(3)
21 (candidate filing); *id.* § 29A.32.210 (voters’ pamphlets); *id.* §§ 29A.40.070, .091(1) (mailing
22 ballots); *see also* Declaration of Kathy Fisher. During and after elections, county duties include
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25 ¹ Available at [https://www.courts.wa.gov/opinions/pdf/Order%20Regarding%20Redistricting%20](https://www.courts.wa.gov/opinions/pdf/Order%20Regarding%20Redistricting%20Commission%2025700-B-676.pdf)
[Commission%2025700-B-676.pdf](https://www.courts.wa.gov/opinions/pdf/Order%20Regarding%20Redistricting%20Commission%2025700-B-676.pdf).

26 ² Available at [https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/House%20Passed%20](https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/House%20Passed%20Legislature/4407.PL.pdf?q=20220217164036)
[Legislature/4407.PL.pdf?q=20220217164036](https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/House%20Passed%20Legislature/4407.PL.pdf?q=20220217164036).

1 maintaining ballot drop boxes, Wash. Rev. Code. § 29A.40.170, and receiving and processing
2 incoming ballots, *id.* §§ 29A.40.091(4), 29A.40.110, as well as other duties.

3 The Secretary of State is the “chief election officer” in Washington. *Id.* § 29A.04.230.
4 The Secretary keeps records of elections, *id.*; provides for training of state and county election
5 officials and personnel, *id.* § 29A.04.530; and maintains VoteWA, the state’s voter information
6 system. The Secretary coordinates and monitors county precinct mapping, *id.* § 29A.76.040;
7 accepts candidate filings for districts that span more than one county, *id.* § 29A.24.070(2);
8 prepares certain ballot materials, including the statewide voters’ pamphlet, when applicable; and
9 canvasses and certifies election returns for statewide and federal offices and those offices for
10 districts spanning more than one county. *Id.* §§ 29A.32.010 (voters’ pamphlet); 29A.60.250
11 (election returns); *see also* Declaration of Stuart Holmes.

12 **C. Washington’s 2022 Elections Timeline**

13 After the Legislature finalized amendments to the redistricting plan in early
14 February 2022, counties immediately began work to implement that plan in time for the 2022
15 Primary Election. *E.g.*, Fisher Decl. ¶ 4. They and the Secretary’s Office must complete a series
16 of tasks, in sequence, before an election can take place. Statutory deadlines ensure each task is
17 completed in time to keep the overall schedule on track. The statutory deadlines begin this spring:

- 18 • May 2: deadline for revising precinct boundaries (Wash. Rev. Code
19 § 29A.16.040(1)) (two weeks before candidate filing period opens)
- 20 • May 16-20: candidate filing period (*id.* § 29A.24.050)
- 21 • May 23: deadline for candidates to withdraw (*id.* § 29A.24.131)
- 22 • May 24: deadline for the Secretary of State to certify candidates to county
23 auditors (*id.* § 29A.36.010)
- 24 • May 27: deadline for candidates to provide statements and photographs to
25 Secretary for voters’ pamphlet (Wash. Admin. Code § 434-381-120)

1 • June 18: deadline for mailing primary ballots to overseas residents and military
2 personnel (Wash. Rev. Code § 29A.40.070(2)) (45 days before primary); *see also* Military and
3 Overseas Voter Empowerment Act, 52 U.S.C. § 20302(a)(8) (requiring that absentee ballots for
4 federal positions be available to military voters 45 days before primary or general election)

5 • July 15: voting period begins (Wash. Rev. Code § 29A.40.070(1)) (18 days
6 before primary)

7 • August 2: primary election (*id.* § 29A.04.311)

8 The first task, precinct revision, occurs in the year after redistricting and takes weeks.
9 Fisher Decl. ¶¶ 8-14. In creating precincts, counties must comply with several requirements.
10 Precincts cannot exceed 1,500 registered voters or such lesser number set by the county. Wash.
11 Rev. Code § 29A.16.040(2). A precinct “must be wholly within a single congressional district,
12 a single legislative district, a single district of a county legislative authority, and, if applicable, a
13 single city.” *Id.* § 29A.16.050(1). Precincts must also be “composed, as nearly as practicable, of
14 contiguous and compact areas[.]” and precinct boundaries must generally “follow visible,
15 physical features delineated on the most current maps provided by the United States census
16 bureau.” *Id.* §§ 29A.16.050(2), (3); Fisher Decl. ¶ 10. The work is technical, requiring use of
17 Geographic Information Services (GIS) data and mapping software. Counties with fewer staff
18 and technical resources may require technical assistance from the Secretary’s Office to complete
19 this task. *See* Holmes Decl. ¶ 15.

20 After county staff finish revising precincts, county legislative authorities, whether a
21 county council or county commission, must approve precinct boundaries. Wash. Rev. Code
22 § 29A.16.040. Counties must comply with the state Open Public Meetings Act, and some
23 counties require public comment periods before the county legislative authorities can adopt
24 precinct boundary changes. Wash. Rev. Code. §§ 42.30.020(1)(b), 42.30.060; Holmes Decl.
25 ¶ 16. The changes would need to appear on the county’s legislative agenda for adoption. This
26 approval process therefore takes an additional one to two weeks depending on the county. Most

1 counties have completed this process for 2022. Holmes Decl. ¶¶ 12, 16. For example, the Yakima
 2 County Board of Commissioners considered and approved precinct revisions from the Yakima
 3 County Auditor’s office at its March 15 meeting.³

4 After precinct boundaries are final, the Secretary’s Office works with counties to validate
 5 the boundaries and incorporate them into the state’s elections management system, VoteWA.
 6 Holmes Decl. ¶ 17. Counties export the lines they’ve drawn into a “shapefile”—a file of
 7 geographic data from GIS software. Each county then provides the Secretary’s Office with that
 8 shapefile, and the Secretary’s Office consolidates the county files into its own software. *Id.* The
 9 Secretary’s Office then validates the precinct lines, making sure they do not inadvertently cross
 10 legislative or congressional district boundaries, county lines, or other precinct lines, and making
 11 sure no address is assigned to multiple precincts or, on the other hand, no precinct at all. *Id.* ¶ 18.
 12 The Secretary’s Office then exports the new, consolidated shapefile into VoteWA, which
 13 connects the precinct boundary information to voter (and potential candidate) address
 14 information. *Id.* ¶¶ 19-20.

15 The workflow then shifts back to the counties. They must identify voters affected by
 16 precinct changes of their new precinct assignment. That precinct assignment, and for some
 17 offices the specific segment of a precinct, is the means by which the VoteWA system verifies a
 18 candidate’s eligibility for office when they file for candidacy online. For that reason, this process
 19 must be complete before candidates file to run for office, which this year occurs May 16-20.
 20 Holmes Decl. ¶¶ 19-24; Fisher Decl. ¶¶ 15-16.

21 In the four weeks between candidate filing and the mailing of overseas and military
 22 ballots, voters’ pamphlets and the ballots themselves must be prepared, checked for accuracy,
 23 and printed. Because of the number of different districts and offices on the ballot, counties must
 24 design many different ballot combinations. Holmes Decl. ¶¶ 28-37; Fisher Decl. ¶¶ 17-28. Some

25 ³ Agenda available at https://www.yakimacounty.us/AgendaCenter/ViewFile/Agenda/_03152022-1145?html=true.
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1 counties, such as Yakima, have obligations under federal law to provide ballots in multiple
 2 languages.⁴ Fisher Decl. ¶ 22. For Yakima, that translation into Spanish is done in-house. *Id.*
 3 The Secretary's office prepares the state-level content that appears in each primary ballot,
 4 including design and translation into Spanish (statewide) and Chinese and Vietnamese (for King
 5 County). Holmes Decl. ¶ 30. Counties print and mail primary ballots (or have them printed and
 6 mailed by outside vendors). *Id.* ¶ 31; Fisher Decl. ¶ 24-27.

7 In Yakima County, for example, ballot and voters' pamphlet preparation takes two
 8 full-time staff one month to complete. Fisher Decl. ¶ 20. Because of the knowledge involved in
 9 designing, translating, and verifying ballots, and time and budget limitations, hiring additional
 10 staff during this period is not an option. *Id.* ¶ 28.

11 The timeline is tight. Indeed, Washington recently amended its constitution to move the
 12 redistricting deadline up by six weeks, from January 1 to November 15, to allow for more time
 13 to gear up for the next election. Wash. Const. art. II, § 43(6); Amendment 108 (2016).

14 III. ARGUMENT

15 A. Secretary Hobbs Takes No Position on the Merits

16 Secretary Hobbs takes no position on whether Legislative District 15 violates Section 2
 17 of the Voting Rights Act. *See* Notice that Secretary Hobbs Takes No Position, Dkt. # 40.

18 Secretary Hobbs was not involved in and has no authority over the creation of district
 19 maps. The Washington Constitution commits that power to the Redistricting Commission. Wash.
 20 Const. art II, § 43. The Secretary's statutory roles related to the redistricting process are: to serve
 21 as a source of information and a liaison to the U.S. Census Bureau and to coordinate and assist
 22 counties with precinct boundary mapping. Wash. Rev. Code § 29A.76.040. That first obligation
 23 precedes the actual redistricting itself, and the second obligation follows it.

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⁴ *See* Voting Rights Act Amendments of 2006, Determinations Under Section 203, 86 Fed. Reg. 69,611;
 69,617 (Dec. 8, 2021).

1 Moreover, the Secretary cannot provide the full relief Plaintiffs seek. At this point, the
2 power to modify district maps rests with the Commission, following action by the Legislature to
3 reconvene it. Wash. Const. art II, §§ 43(7), (8); Wash. Rev. Code § 44.05.120(1).

4 Secretary Hobbs continues to believe this litigation must include additional proper
5 parties, whether through intervention or involuntary joinder, to allow thorough consideration of
6 the issues and complete relief.

7 **B. No Injunction Altering District Boundaries Should Issue After March 28**

8 Because the 2022 elections are quickly approaching, practical and equitable
9 considerations weigh heavily and may foreclose the relief Plaintiffs seek on the timeline they
10 have sought it even if the Court concludes Plaintiffs are likely to succeed on the merits. The
11 Supreme Court has been clear that “[w]hen an election is close at hand, the rules of the road must
12 be clear and settled.” *Merrill v. Milligan*, 142 S. Ct. 879, 880-81 (2022) (Kavanaugh, J.,
13 concurring in grant of applications for stays) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per
14 curiam)). Washington is rapidly approaching a logistical and legal point of no return in its
15 elections process. Given the strong public interest in orderly elections administration and voter
16 confidence in elections, an injunction requiring new district maps should not issue after
17 March 28.

18 **1. The State and the public share a substantial interest in avoiding election
19 chaos or delay**

20 The Supreme Court “has repeatedly emphasized that federal courts ordinarily should not
21 alter state election laws in the period close to an election—a principle often referred to as
22 the *Purcell* principle.” *Democratic Nat’l Comm. v. Wisc. State Legislature*, 141 S. Ct. 28, 30-31
23 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay) (collecting cases). In
24 *Purcell v. Gonzalez*, the Supreme Court vacated an appellate injunction of Arizona’s voter
25 identification rules, recognizing that “[c]ourt orders affecting elections . . . can themselves result
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1 in voter confusion and consequent incentive to remain away from the polls. As an election draws
2 closer, that risk will increase.” 549 U.S. at 4-5.

3 Earlier this year, the Supreme Court in *Merrill v. Milligan*, also a redistricting case, gave
4 great weight to interests in election implementation, as well as the considerable time and
5 resources required to carry out elections. 142 S. Ct. at 880. In *Merrill*, the Supreme Court stayed
6 a district court injunction of Alabama’s congressional district maps. *Id.* at 879. Though there
7 were four months before the primary election day, *id.* at 888 (Kagan, J., dissenting from grant of
8 applications for stays), Justice Kavanaugh, whose concurring opinion provided the only rationale
9 in support of the order, recognized that states have an “extraordinarily strong interest in avoiding
10 late, judicially imposed changes to [their] election laws and procedures.” *Id.* at 881. As he stated,
11 “[l]ate judicial tinkering with election laws can lead to disruption and to unanticipated and unfair
12 consequences for candidates, political parties, and voters, among others.” *Id.*

13 Accordingly, the Supreme Court in *Merrill* applied the principle “that federal district
14 courts ordinarily should not enjoin state election laws in the period close to an election.” *Id.*
15 at 879 (citing *Purcell*). Likewise, in *Benisek v. Lamone*, the Supreme Court found that “due
16 regard for the public interest in orderly elections supported” a district court’s denial of a
17 preliminary injunction in a Maryland redistricting case in August of the year preceding an
18 election cycle. 138 S. Ct. 1942, 1944-45 (2018). *See also Yazzie v. Hobbs*, 977 F.3d 964,
19 968-69 (9th Cir. 2020) (“Although we do not discourage challenges to voting laws that may be
20 discriminatory or otherwise invalid, whenever they may arise, we are mindful that the Supreme
21 Court ‘has repeatedly emphasized that lower federal courts should ordinarily not alter the
22 election rules on the eve of an election.’” (quoting *Republican Nat’l Comm. v. Democratic Nat’l*
23 *Comm.*, 140 S. Ct. 1205, 1207 (2020))). And many district courts, most recently the Northern
24 District of Georgia, have likewise denied preliminary relief in redistricting or gerrymandering
25 challenges, regardless of the plaintiffs’ likelihood of success on the merits, “when the state’s
26 election machinery was already in progress.” *Alpha Phi Alpha Fraternity, Inc. v. Raffensperger*,

1 No. 1:21-cv-5337 *et al.*, 2022 WL 633312, at *76 (N.D. Ga. Feb. 28, 2022) (concluding plaintiffs
 2 were likely to succeed in vote-dilution challenge but denying preliminary injunction for May 24,
 3 2022 primary) (citing *Wright v. Sumter Cnty. Bd. of Elections & Registration*, No. 1:14-cv-42,
 4 2018 WL 7365178, at *3 (M.D. Ga Mar. 30, 2018), *objections overruled*, 2018 WL 7365179
 5 (M.D. Ga Apr. 11, 2018), and *modified*, 2018 WL 7366461 (M.D. Ga. June 21, 2018); *Covington*
 6 *v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016)).

7 The *Purcell* principle, as elaborated on in *Merrill*, counsels caution here before issuing
 8 injunctive relief too late into Washington’s 2022 election cycle. To be clear, the Secretary does
 9 not contend that relief is currently unavailable in light of *Purcell*. If this Court is satisfied that
 10 Plaintiffs have made a clear showing of an entitlement to relief and promptly issues an order, the
 11 Secretary is committed to working with its county partners to implement a court order. But the
 12 window is rapidly closing. In order to implement alternative maps in time for the 2022 election,
 13 the Secretary and counties will need to have an injunction *and maps for all affected districts*⁵ in
 14 hand by March 28, 2022.

15 2. Washington’s elections preparations are well underway

16 As a similarly-positioned district judge observed, “the election calendar generally works
 17 backwards from the date for an election.” *Alpha Phi Alpha Fraternity*, 2022 WL 633312, at *71.
 18 Although the 2022 general election is not until November 8, the primary is much sooner,
 19 August 2. Focusing on even that day alone understates the urgency because the actual period
 20 when voters receive ballots begins earlier—sometimes much earlier: as a matter of state and
 21 federal law, primary ballots must be mailed to overseas and military voters 45 days before the
 22 election, that is, June 18 (for practical purposes, June 17, because June 18 is a Saturday, *see*
 23 *Fisher Decl.* ¶ 23). 52 U.S.C. § 20302(a)(8)(A); Wash. Rev. Code § 29A.40.070(2).

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 25 ⁵ To date, Plaintiffs have not provided proposed alternative maps for all affected districts. The declaration
 26 of Dr. Collingwood includes a “plaintiff map” of Legislative District 14 (under Plaintiffs’ proposed re-numbering)
 that would have significant impacts on neighboring districts, which could in turn affect surrounding districts.
 Dkt. # 38-25 at pp. 4, 6.

1 To have ballots in the mailbox by June 18 requires (1) precinct revisions, so candidates
 2 can file and counties know which voters receive which ballot version; (2) candidate filing, so
 3 elections officials know who is on the ballot; and (3) ballot designing itself. Each step must be
 4 complete to have the information necessary to begin the next. The statutory deadlines guiding
 5 these steps reflect the minimum time required to complete them and cannot be moved without
 6 creating an unacceptable risk of delaying the August 2 primary.

7 Five weeks (March 28 through May 2) are necessary for counties to revise precincts,
 8 which requires both elections staff to re-draw the precincts and the county legislative authority
 9 to approve them. Wash. Rev. Code § 29A.16.040. Counties have revised precincts already to
 10 reflect the current district maps, and any county affected by an injunction drawing new maps
 11 would need to redo that work. Holmes Decl. ¶ 12; Fisher Decl. ¶¶ 8-15.

12 Redrawing precincts to match new districts is a technical, time-intensive process, *see*
 13 *supra* at pp. 5-6, that requires, for some counties including Yakima County, three weeks. Fisher
 14 Decl. ¶¶ 8-11. Counties frequently begin this process immediately upon the redistricting plan
 15 becoming final. *Id.* ¶ 4. Yakima County Elections Manager Kathy Fisher spent three weeks
 16 reviewing the precincts in her county one-by-one after the legislative amendments to the
 17 Commission's district maps became final on February 8 of this year. *Id.* ¶¶ 8-11.

18 The process also requires county legislative approval and in some cases, public comment,
 19 which takes one to two weeks after the technical work. Holmes Decl. ¶ 16. The time necessary
 20 for approval by the county legislative authority will vary by county and must take into account
 21 the notice required by Washington's Open Public Meetings Act, *see* Wash. Rev. Code § 42.30,
 22 and possible public comment. Between technical work and approval, five weeks, March 28 to
 23 May 2, is therefore necessary.

24 By law counties cannot change precincts less than two weeks before candidate filing,
 25 Wash. Rev. Code § 29A.16.040(1). This two-week window is necessary for practical reasons. It
 26 provides the minimum time necessary for the Secretary's Office, counties, and candidates to

1 prepare for filing. The Secretary's Office requires at least two weeks (and typically has longer)
2 to validate the county precinct boundaries to ensure no precincts overlap, there are no gaps
3 between precincts, no precinct is assigned to multiple districts or cities, and no legislative or
4 congressional district lines cross precincts. Holmes Decl. ¶¶ 17-18. The Secretary's Office must
5 also consolidate the shapefiles and import them into the statewide VoteWA system during this
6 two-week period. *Id.* ¶¶ 19-20. This is necessary to allow for online candidate filing, which
7 validates eligibility by a potential candidate's precinct assignment (and, for some offices other
8 than legislative districts, segments smaller than a precinct). *Id.* ¶ 23. Counties must also notify
9 voters of new precinct assignments. Fisher Decl. ¶ 15. It is not realistic or feasible to compress
10 this work, which generally occurs over a longer timeframe, into less than two weeks. Holmes
11 Decl. ¶¶ 17-18. As a result, for the 2022 elections to move forward, precincts must be finalized
12 no later than May 2, 2022.

13 Plaintiffs' suggestion that the Court could move the May 16 through May 20 candidate
14 filing period to accommodate an injunction requiring new maps, Dkt. # 38 at pp. 22-23, is not
15 feasible. The candidate filing period cannot be moved without cutting into the minimum time
16 necessary to have ballots ready to mail June 18. As explained above, under state and federal law,
17 ballots must be mailed to military and overseas voters by June 18 (45 days before the August 2
18 primary election). That leaves less than one month for preparing both voters' pamphlets and
19 ballots. That entire period is necessary to design the numerous required ballot layouts and ensure
20 accuracy. Fisher Decl. ¶ 20.

21 To create ballots, each county must design many different ballot layouts, as different
22 jurisdictions within the county will include different races and measures such as school districts,
23 city council, or fire districts. *See* Holmes Decl. ¶ 32, Fisher Decl. ¶ 18. Counties must test each
24 ballot type in their vote tallying system to ensure the ballots are formatted properly and can be
25 tabulated correctly. Holmes Decl. ¶ 32. The ballot design process begins immediately after the
26 candidate filing period ends. Fisher Decl. ¶ 17. In addition, some flexibility is necessary to

1 account for the possibility of candidates withdrawing, which they must do by May 23, Wash.
 2 Rev. Code § 29A.24.131, or a legal challenge to a declared candidate's eligibility for office, *see*
 3 Wash. Rev. Code § 29A.68.011. Designing the ballot layout cannot begin before the candidate
 4 filing period closes, as counties need to know which candidates will be included on the ballot.

5 Once ballots are designed, tested, and checked for accuracy, they need to be printed.
 6 Yakima County will print about 900 ballots for military and overseas voters itself, for mailing
 7 by June 18 (for practical purposes, they expect to complete mailing Friday June 17). Fisher Decl.
 8 ¶ 24, Holmes Decl. ¶ 31. The County's deadline to submit print-ready ballot versions to its print
 9 vendor for non-military or overseas ballots, which must be mailed July 15, is typically about the
 10 same time as military and overseas ballots are mailed. Fisher Decl. ¶ 26.⁶

11 Candidates have until May 27 to submit their photographs and candidate statements for
 12 the voters' pamphlets, Wash. Admin. Code § 434-331-120(1), which leaves three weeks for
 13 creating, translating, and printing the voters' pamphlet in time for it to be posted online for
 14 military and overseas voters. Holmes Decl. ¶¶ 29-31; Fisher Decl. ¶¶ 19-21, 27. In Yakima
 15 County, a print-ready version of the voters' pamphlet is due to the printer by June 24. Fisher
 16 Decl. ¶ 27.

17 In sum, the statutory candidate filing deadline—and the precinct revision deadline two
 18 weeks before that—exist for a reason: they reflect the minimum amount of time necessary to
 19 achieve a phase of elections preparation. Delaying one deadline has cascading effects, delaying
 20 other deadlines, jeopardizing timely ballots, and jeopardizing timely elections.

21 The Secretary's Office and counties require the full time between May 20 through June
 22 18 to prepare ballots and voters' pamphlets. Candidates file May 16-20. The Secretary's Office
 23 requires at least the statutory minimum of May 2 through May 16, to consolidate, validate, and

24 _____
 25 ⁶ Even if state or federal law allowed some flexibility (*see* Wash. Rev. Code § 29A.40.070(2) (referring to
 26 possible litigation exception)) in when ballots are mailed to military and overseas voters, delaying that mailing
 would not be equitable or feasible. Military and overseas voters need time to ensure they receive ballots or can seek
 replacement ballots if necessary. Moreover, such delay would not lessen the time crunch here, because as noted
 above the remaining ballots are due to the printer around the same date as military and overseas ballots are mailed.

1 import precinct changes into the VoteWA system. And counties require five weeks before that
 2 to again redraw precinct boundaries to account for new maps. Thus, ordering new district maps
 3 after March 28 would “put us in serious jeopardy of failing to meet our constitutional
 4 obligations,” and seriously risk delaying the August primary. Holmes Decl. ¶ 9.

5 Promptly establishing legislative district boundaries is in the public interest for an
 6 additional reason besides election administration. Altering boundaries affects who is eligible to
 7 run for office in each district. For example, if an incumbent legislator’s residence is not within
 8 the boundaries of the new legislative district, that may result in additional voters seeking to be
 9 candidates and others ruling out a run.⁷ Members of the public have an interest in knowing which
 10 elected offices are available to them in time to make decisions about whether to seek office.

11 Plaintiffs do not suggest that the Court consider delaying the August 2, 2022, primary
 12 election, and for that reason alone the Court should not entertain such an extraordinary remedy
 13 should Plaintiffs raise it on reply or at oral argument. Moreover, “the strong public interest in
 14 having elections go forward generally weighs heavily against an injunction that would postpone
 15 an upcoming election.” *Cano v. Davis*, 191 F. Supp. 2d 1135, 1139 (C.D. Cal. 2001) (four
 16 months before election, denying temporary restraining order postponing election after California
 17 redistricting) (citing *Page v. Bartels*, 248 F.3d 175, 194-97 (3d Cir. 2001); *Chisom v. Roemer*,
 18 853 F.2d 1186, 1189-90 (5th Cir. 1988)). Postponing the primary election would be particularly
 19 challenging in Washington, which has one of the later primary dates in the country.⁸ Shortening
 20 the period to certify the results of the primary election, *see e.g.*, Wash. Rev. Code § 29A.60.190
 21 (providing 14 days from primary election for counties to canvass and certify primary results);
 22 *id.* § 29A.60.240 (providing 17 days from primary election for Secretary to certify multi-county
 23

24 ⁷ *See, e.g.*, Ryan Rogers, *Dufault Not Seeking Re-election; Does Not Want to Move Family Out of Selah*
 25 (Feb. 24, 2022), <https://kimatv.com/news/local/dufault-not-seeking-re-election-does-not-want-to-move-family-out-of-selah> (last visited Mar. 21, 2022).

26 ⁸ National Conference of State Legislatures, *2022 State Primary Election Dates and Filing Deadlines*
 (Feb. 24, 2022), <https://www.ncsl.org/research/elections-and-campaigns/2022-state-primary-election-dates-and-filing-deadlines.aspx> (last visited Mar. 21, 2022).

1 legislative districts), is particularly inappropriate in Washington. Because Washington (a) is a
2 vote-by-mail state, Wash. Rev. Code § 29A.40.010; (b) accepts ballots postmarked by election
3 day, Wash. Rev. Code § 29A.40.091(4); and (c) has a robust process allowing voters to cure
4 signature problems after receipt of ballots, Wash. Rev. Code § 29A.60.165, the certification
5 period after the primary cannot realistically be shortened. That leaves just five weeks between
6 the August 19 primary certification deadline and the September 24 deadline, established by
7 federal law, for mailing general election ballots to overseas and military voters. During this
8 period, elections officials must once again design and test multiple ballots and prepare a voters'
9 pamphlet, and must also undertake the many other important logistical tasks associated with
10 holding a general election. Even if they had tried, Plaintiffs could not make a showing that can
11 outweigh the public interest in maintaining the primary election date here.

12 It is true that the Washington Constitution states that, if the Redistricting Commission
13 fails to approve a redistricting plan, the Washington Supreme Court must adopt a plan “by April
14 30th.” Wash. Const. art. II, § 43(6). At the time that provision was enacted, however,
15 Washington’s elections calendar was much later—candidate filing took place in July and the
16 primary took place at the end of September. *See* Engrossed S.B. 6236, at Sec. 1, 59th Leg., Reg.
17 Sess. (Wash. 2006) (amending primary date), Sec. 4 (amending candidate filing). For the reasons
18 discussed above, however, as a matter of practical necessity, such a plan would now have to be
19 issued well before the constitutional deadline to ensure the primary takes place on time. Had the
20 Redistricting Commission failed to timely adopt a redistricting plan, the Secretary would have
21 communicated similar deadlines to the Washington Supreme Court.

22 Plaintiffs minimize the difficulty and time involved in implementing a new district map,
23 and the last-minute nature of their request. The Commission completed its redistricting on
24 November 15, and the Washington Supreme Court deemed that they had met their deadline on
25 December 3. Plaintiffs filed their complaint six weeks later, on January 19. Dkt. # 1. They filed
26 their motion for a preliminary injunction five weeks later, on February 25. Dkt. # 38. Although

1 the Legislature did consider and ultimately adopt minor amendments to the plan through their
 2 constitutional deadline of February 8, 2022, Plaintiffs were not required to wait until that time,
 3 and indeed two-and-a-half weeks past that time, to seek a preliminary injunction. From a voter’s
 4 perspective, February 25 may not appear to be the “eve” of an election, Dkt. # 38 at p. 22 (citing
 5 *Feldman v. Arizona Secretary of State’s Office*, 843 F.3d 366, 419 (9th Cir. 2016))—but for
 6 elections officials, it certainly is. The work required to make the election happen is well
 7 underway. And the relief Plaintiffs seek is not about how voters vote during the election itself,
 8 like the ballot collection regulation in *Feldman* was or like a voter identification requirement.
 9 It’s about the map that is the foundation for the many essential steps to hold the 2022 elections.
 10 The critical time for finalizing that map is months before the primary.

11 Plaintiffs are also wrong to suggest that the burden to elections officials would merely
 12 be one of “nonenforcement” of an allegedly unlawful redistricting plan. Dkt. # 38 at p. 22 (citing
 13 *United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012)). Unlike in *United States v.*
 14 *Alabama*, which was not an elections case and involved an unlawful immigration law that state
 15 defendants could simply not enforce, here elections officials can’t simply not hold an election.
 16 There has to be an election, and for that there have to be district maps. Plaintiffs do not suggest
 17 that Washington use maps from the previous biennium (a proposal that, in light of population
 18 changes, would raise serious equal protection one-person, one-vote problems, *see Reynolds v.*
 19 *Sims*, 377 U.S. 533, 568 (1964)). Implementing new maps on a shorter timeline is a significant
 20 undertaking.

21 IV. CONCLUSION

22 The Secretary does not suggest that injunctive relief that alters district maps in the first
 23 election cycle after redistricting would never be possible or, at least at this moment, is impossible
 24 here. But the reality is that statewide elections “require enormous advance preparations by state
 25 and local officials, and pose significant logistical challenges.” *Merrill*, 142 S. Ct. at 880
 26 (Kavanaugh, J., concurring in grant of applications for stays). State and county elections officials

1 are rapidly approaching a point of no return with respect to use of the current legislative districts
2 for the 2022 elections. Unless Plaintiffs are able to establish that they are clearly entitled to relief
3 and identify a statewide legislative map that this Court can order by March 28, 2022, it will not
4 be feasible to enjoin use of the current legislative district maps for the 2022 elections.

5 RESPECTFULLY SUBMITTED this 21st day of March 2022.

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DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court’s CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 21st day of March 2022, at Olympia, Washington.

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