

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

SUSAN SOTO PALMER, et al.  
Plaintiffs,  
v.  
Secretary of State STEVEN HOBBS, in his  
official capacity as Secretary of State of  
Washington, et al.,  
Defendants.

Case No. 3:22-cv-05035-RSL

**PLAINTIFFS’ OPPOSITION TO  
DEFENDANT SECRETARY  
HOBBS’ MOTION TO JOIN  
REQUIRED PARTIES**

Judge: Hon. Robert S. Lasnik

NOTE ON MOTION CALENDAR:  
April 8, 2022

**INTRODUCTION**

Defendant Hobbs wrongly contends that the State of Washington and/or the Redistricting Commission (“Commission”) are required parties to the instant case. The parties that hold the power to either enforce the deficient map (“Enacted Plan”) or redraw the deficient maps are those parties Plaintiffs have already named in this suit.

This is now the second motion from a Defendant asking this Court to name someone else as a party while refusing to engage with the merits of Plaintiffs’ claims. Although neither Defendant may *wish* to be a party to this case, they provide no legal reason why they (and they alone) should not be. As the entity tasked with the enforcement of Washington’s district maps, nothing precludes Defendant Secretary Hobbs from assessing the merits of Plaintiffs’ claims. Defendant Secretary Hobbs’ unwillingness to address the alleged violation of Plaintiffs’ voting rights, because such allegations are inconvenient, does not excuse him as a party. While there are many parties Defendants prefer to defend this case in their stead, preference alone does not a

1 necessary party make. Accordingly, Plaintiffs oppose Defendant Secretary Hobbs' motion to join  
2 the Commission, its members, and/or the State of Washington to this case.

### 3 BACKGROUND

4 On January 19, 2022, Plaintiffs filed their complaint challenging the legislative  
5 redistricting plan drawn by the Commission and approved by the Washington Legislature  
6 ("Enacted Plan"). *See* Compl. Plaintiffs allege that Legislative District 15 was drawn to create the  
7 façade of a Latino opportunity district but in fact dilutes Latino voting power in violation of Section  
8 2 of the federal Voting Rights Act (VRA). *Id.* ¶¶ 34, 273-83.

9 To remedy this violation, Plaintiffs seek declaratory and injunctive relief. They request a  
10 declaration that the state's legislative redistricting plan violates Section 2. *Id.*, Prayer for Relief,  
11 ¶¶ (a)-(b). They seek an order preliminarily and permanently enjoining Defendants from  
12 conducting elections under this invalid plan. *Id.* ¶ (c). And Plaintiffs request that the Court "order  
13 the implementation and use of a valid state legislative plan," as well as "any and all further relief"  
14 necessary to cure the violation. *Id.*, ¶¶ (d), (f)-(g).

15 The complaint names three state officials as defendants against whom the Court could order  
16 Plaintiffs' requested relief: Steven Hobbs, who in his official capacity as Secretary of State,  
17 oversees and administers elections in accordance with the state's redistricting plans, *id.* ¶ 59; and  
18 legislative leaders Laurie Jenkins and Andrew Billing, in their respective official capacities as  
19 Speaker of the House and Senate Majority Leader, *id.* ¶¶ 60-61. Defendants Jenkins and Billig  
20 deny they are proper parties in their Motion to Dismiss, which has been fully briefed. Dkt. # 37,  
21 44, 47. On February 25, 2022, Plaintiffs filed their Motion for Preliminary Injunction, which has  
22 also been fully briefed. Dkt. # 38, 49, 50, 54. Recently, another lawsuit was filed challenging the  
23  
24  
25  
26

1 Commission's state legislative plan under the Equal Protection Clause and bringing suit against  
2 only Secretary Hobbs in his official capacity. *See Garcia v. Hobbs*, No. 3:22-cv-5152, Dkt. # 1 at  
3 ¶¶ 72-75.

## 4 ARGUMENT

5 None of the prongs of Fed. R. Civ. P. 19(a)(1)(A) or (B) compel joinder of other parties to  
6 this suit. The absence of the parties listed by Defendant Hobbs will not impede the Court's ability  
7 to grant complete relief, interfere with these parties' ability to protect themselves, or pose any risk  
8 of inconsistent obligations on any of them.

### 10 I. Legal Standard

11 In determining whether a person is a required party, a court must first determine whether  
12 the person is "subject to service of process" and that their joinder does "not deprive the court of  
13 subject-matter jurisdiction[.]" Fed. R. Civ. P. 19(a)(1). If these conditions are met, one of two  
14 alternatives must apply: first, that "in that person's absence, the court cannot accord complete relief  
15 among the existing parties," or second, that the "person claims an interest relating to the subject of  
16 the action and is so situated that disposing of the action in the person's absence may: (i) as a  
17 practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing  
18 party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent  
19 obligations because of the interest." Fed. R. Civ. P. 19(a)(1)(A)-(B).

20  
21 "There is no precise formula for determining whether a particular nonparty should be  
22 joined under Rule 19(a)" as "[t]he determination is heavily influenced by the facts and  
23 circumstances of each case." *Equal Emp. Opportunity Comm'n v. Peabody W. Coal Co.*, 610 F.3d  
24 1070, 1081 (9th Cir. 2010) (quoting *N. Alaska Env't Ctr. v. Hodel*, 803 F.2d 466, 468 (9th Cir.  
25

1 1986)). Here, the facts demonstrate that neither the Commission, its members, nor the State of  
 2 Washington need to be joined in the matter.<sup>1</sup>

3 **II. Neither the Redistricting Commission nor its Individual Commissioners are Required**  
 4 **Parties.**

5 Defendants argue that this Court cannot accord complete relief, specifically Plaintiffs'  
 6 request for the implementation and use of a valid state legislative plan, absent joinder of the  
 7 Commission and/or its members. Mot. to Join Required Parties (“Joinder Mot.”), Dkt. # 53 at 4.  
 8 This is incorrect. As Plaintiffs have explained, *see* Dkt. # 44 at 6, their requested relief could issue  
 9 against Secretary Hobbs, as enforcer of the illegal map, or Defendants Jinkins and Billig in their  
 10 official capacities as leaders of the Washington Legislature, which must act before any changes  
 11 can be made to the state’s legislative districts. The Commission currently possesses *no* power  
 12 under state law to modify the current map. *See* Wash. Const. art. II, § 43.

14 The Washington Constitution strictly limits the scope of power the Commission holds over  
 15 redistricting. The Commission draws redistricting maps, but it must do so before the November  
 16 15, 2021 deadline. *Id.* § 43(6). Once it has done so, the redistricting plans must be transmitted to  
 17 the Legislature, and this year the Enacted Plan became final upon the Legislature’s February 2022  
 18 approval of the Commission’s maps. *See* RCW 44.05.100(3). The Enacted Plan may only be  
 19 modified after the next decennial census *or* by action of the Legislature, specifically, a two-thirds  
 20 vote of members of each house to reconvene the Commission. *See* Wash. Const. art. II, § 43(8);  
 21 RCW 44.05.100(3); RCW 44.05.120.

23 Thus, for this Court to grant Plaintiffs the relief they seek, neither the Commission nor its  
 24

---

25 <sup>1</sup> Plaintiffs maintain that the current Defendants are proper parties whose presence allows this Court to grant full relief.  
 26 This assertion is fully discussed in Plaintiffs’ opposition to Defendants Billig’s and Jinkins’s Motion to Dismiss. *See*  
 Dkt. # 44.

1 members need be parties, as, following November 15, 2021, they are simply hollow vessels.<sup>2</sup>  
 2 Indeed, the Commission has begun winding down its operation and held its final regular business  
 3 meeting on January 18, 2022.<sup>3</sup> Without action by the Legislature, the Commission lacks any  
 4 authority to modify the state’s legislative district plan to afford Plaintiffs their requested relief. *See*  
 5 RCW 44.05.120. And as Secretary Hobbs concedes, the Commission will cease to exist by July 1,  
 6 2022. RCW 44.05.110.<sup>4</sup>  
 7

8 Moreover, even if the Commission or its members were joined—they should not be—it is  
 9 far from clear what action the Commission has the authority to, or is willing to take, in this case.  
 10 In addition to the state law constraints outlined above, the Commission already declined to  
 11 intervene in this lawsuit, and the Chair of the Commission Sarah Augustine recently resigned and  
 12 has not yet been replaced.<sup>5</sup> If the Commission’s March 7, 2022 vote declining to intervene in this  
 13 case is any guide, the deadlocked Commission would face serious challenges in taking any  
 14 necessary steps for action or decision-making, thus providing little utility to this Court in affording  
 15 Plaintiffs the relief they seek.  
 16

17 Further, although Defendants note that two members of the Commission claimed an  
 18  
 19

20 <sup>2</sup> The parties can already gather any relevant information the Commission or its members may have through the  
 discovery process, even if those entities are not parties.

21 <sup>3</sup> Washington State Redistricting Commission, January 18th Regular Business Meeting, at 06:28-06:52 (Jan. 18,  
 2022), <https://tvw.org/video/washington-state-redistricting-commission-2022011465/?eventID=2022011465>.

22 <sup>4</sup> Defendant Hobbs notes that he “would not interfere with an extension of the Commission’s term by the Washington  
 Supreme Court.” Joinder Mot. at 6. But that is no answer, as it would require the action of *yet another* third party, the  
 Washington Supreme Court, for the Commission to be able to even continue to exist as an entity (much like it must  
 23 be reconvened by the Legislature to take any action on maps). It is hard to see how relief cannot be afforded without  
 a party that currently has no authority and will indeed cease to exist entirely in less than three months.

24 <sup>5</sup> Washington State Redistricting Commission, March 7th Special Business Meeting, at 15:58 (Mar. 7, 2022),  
<https://tvw.org/video/washington-state-redistricting-commission-2022031203/?eventID=2022031203>; *see also*  
 25 Joanna Markell, *WA Redistricting Commission Won’t Intervene In Voting Rights Lawsuit; Chair Resigns*, YAKIMA  
 HERALD-REPUBLIC (Mar 7, 2022), [https://www.yakimaherald.com/news/local/wa-redistricting-commission-wont-](https://www.yakimaherald.com/news/local/wa-redistricting-commission-wont-intervene-in-voting-rights-lawsuit-chair-resigns/article_20827ca1-24cc-539b-9015-395796869a9a.html)  
 26 [intervene-in-voting-rights-lawsuit-chair-resigns/article\\_20827ca1-24cc-539b-9015-395796869a9a.html](https://www.yakimaherald.com/news/local/wa-redistricting-commission-wont-intervene-in-voting-rights-lawsuit-chair-resigns/article_20827ca1-24cc-539b-9015-395796869a9a.html).

1 interest in this suit, Defendants fail to show, nor have the members of the Commission themselves  
2 indicated, that they have anything other than a superficial interest in the matter, rather than the  
3 legally protected interest required by Rule 19. *See Shermoen v. United States*, 982 F.2d 1312, 1317  
4 (9th Cir. 1992). Any “interest” of an individual member of the Commission is also belied by that  
5 individual’s role on the Commission. No individual Commissioner, on their own, could be  
6 necessary for this Court to afford relief or have a sufficient interest, as no individual member can  
7 take action on behalf of the Commission; at least three affirmative votes are necessary. *See, e.g.*,  
8 Wash. Const. art. II, § 43(8). And the Commission itself already decided it had no interest that  
9 would be impeded by not being a party to this litigation, as it expressly declined to intervene.  
10

11 In sum, neither the Commission nor its members are required parties for this Court to afford  
12 relief, nor would disposing of the action in their absence impair any interest or obligations.  
13

### 14 **III. The State of Washington is Not a Required Party.**

15 The State of Washington, like the state legislature, is not a necessary party to this litigation.  
16 Although Plaintiffs agree with the Secretary’s assessment that the VRA abrogates sovereign  
17 immunity, *see Joinder Mot.* at 5-6, the State may still raise the issue, and there is no indication that  
18 said immunity has been waived. *See Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996).  
19 Under the *Ex Parte Young* doctrine, the correct parties to litigation are the state officials enforcing  
20 the state law at issue when private parties allege they are injured by the enforcement of a state law  
21 that violates federal law. *Ex Parte Young*, 209 U.S. 123, 167-68 (1908). In this case, those parties  
22 are clear. They are the Defendant Secretary Hobbs, the Secretary of State, tasked with the  
23 enforcement of the redistricting map and state election laws, and the Legislative Defendants, the  
24 legislative leaders who have the sole power to initiate the prospective relief Plaintiffs seek to  
25

1 completely redress their injury.

2 Even if the State of Washington could be joined, Defendant does not establish the state as  
 3 a required party. As explained above, the State is not necessary to ensure Plaintiff's required relief,  
 4 nor does Defendant Hobbs assert that it is. Further, the State to date presents no apparent interest  
 5 in the current case. Indeed, Defendant Hobbs does not even claim the State has claimed an interest  
 6 in this matter and only surmises that the state "would certainly seem to have an interest." Joinder  
 7 Mot. at 7. Nor is it clear that the State would take a position other than that of the current  
 8 Defendants in this litigation. Rather, Defendant Hobbs focuses on the state as party necessary only  
 9 to relieve the inconvenience on the current Defendants, which is not a reason for joinder under  
 10 Rule 19.  
 11

## 12 CONCLUSION

13 Although neither Defendant Hobbs nor Defendants Jenkins and Billig wish to be parties in  
 14 this case, that desire alone is insufficient to render other parties as "required" under Rule 19.  
 15 Defendant Secretary Hobbs fails to cite any real evidence that either the State of Washington or  
 16 the Commission or its individual members are necessary parties. For these reasons, Plaintiffs  
 17 respectfully request that this Court deny Defendant's motion to join these improper parties.  
 18

19 Dated this 4th day of April, 2022.

20 Respectfully submitted,

21 CHAD W. DUNN\*  
 22 SONNI WAKNIN\*  
 23 UCLA Voting Rights Project  
 24 3250 Public Affairs Building  
 25 Los Angeles, CA 90095  
 Telephone: 310-400-6019  
 chad@uclavrp.org  
 Sonni@uclavrp.org

21 By: /s/ Edwardo Morfin  
 EDUARDO MORFIN  
 WSBA No. 47831  
 Morfin Law Firm, PLLC  
 2602 N. Proctor Street, Suite 205  
 Tacoma, WA 98407  
 Telephone: 509-380-9999

26 PLAINTIFFS' OPPOSITION  
 TO DEFENDANT SECRETARY  
 HOBBS' MOTION TO JOIN  
 REQUIRED PARTIES

1 MARK P. GABER\*  
SIMONE LEEPER\*  
2 ASEEM MULJI\*  
Campaign Legal Center  
3 1101 14th St. NW, Ste. 400  
Washington, DC 20005  
4 mgaber@campaignlegal.org  
5 sleeper@campaignlegal.org  
6 amulji@campaignlegal.org

ANNABELLE HARLESS\*  
Campaign Legal Center  
55 W. Monroe St., Ste. 1925  
Chicago, IL 60603  
aharless@campaignlegal.org

THOMAS A. SAENZ\*\*  
ERNEST HERRERA\*  
LETICIA M. SAUCEDO\*  
DEYLIN THRIFT-VIVEROS\*  
Mexican American Legal  
Defense and Educational Fund  
643 S. Spring St., 11th Fl.  
Los Angeles, CA 90014  
Telephone: (213) 629-2512  
tsaenz@maldef.org  
eherrera@maldef.org  
lsaucedo@maldef.org  
dthrift-viveros@maldef.org

\*Admitted Pro Hac Vice  
\*\* Pro Hac Vice Application  
Forthcoming

RETRIEVED FROM DEMOCRACYDOCS.COM



**CERTIFICATE OF SERVICE**

I certify that all counsel of record were served a copy of the foregoing this 4th day of April, 2022 via the Court’s CM/ECF system.

/s/ Edwardo Morfin  
Edwardo Morfin  
WSBA No. 47831  
Morfin Law Firm, PLLC  
7325 W. Deschutes Ave, Suite A  
Kennewick, WA 99336  
Telephone: 509-380-9999

RETRIEVED FROM DEMOCRACYDOCKET.COM

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26