

The Honorable Robert S. Lasnik
The Honorable David G. Estudillo
The Honorable Lawrence Van Dyke

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

BENANCIO GARCIA III,

Plaintiff,

v.

STEVEN HOBBS, in his official capacity
as Secretary of State of Washington, et al.,

Defendants.

Case No.: 3:22-cv-5152-RSL-DGE-LJCV

[PROPOSED] PRETRIAL ORDER

JURISDICTION¹

1. This Court has jurisdiction to hear Plaintiff’s claim pursuant to 42 U.S.C. §§ 1983 and 1988 and 28 U.S.C. §§ 1331, 1343(a)(3) and 1357. This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

2. The Court has jurisdiction over Plaintiff’s claim for costs and attorneys’ fees under Federal Rule of Civil Procedure 54, 42 U.S.C. § 1988, and 52 U.S.C. § 10310(e).

3. A three-judge district court was requested and convened pursuant to 28 U.S.C. § 2284(a), because Plaintiff is “challenging the constitutionality of . . . the apportionment of a[] statewide legislative body.”

¹ The Plaintiffs in *Soto Palmer* would not consent to the filing of a joint pretrial statement for both *Soto Palmer* and *Garcia*, as such, the Parties in *Garcia* file this Pretrial Statement for *Garcia*, and incorporate by reference the contentions, legal and factual, and other sections as otherwise provided in the *Soto Palmer* Pretrial Statement by the Intervenor-Defendants, the State of Washington, and Secretary Steve Hobbs, therein. A copy of the Pretrial Statement in *Soto Palmer* is attached hereto as Exhibit 1.

1 **II. CLAIMS AND DEFENSES**

2 Plaintiff asserts the following claim at trial on the merits scheduled for June 5, 2023:

3 1. Racial gerrymandering of the 15th Legislative District in the State of Washington
4 in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

5 Based on the conclusions of the State’s expert, the other record evidence, and factual
6 findings in relevant VRA cases, the State of Washington cannot and does not intend to dispute at
7 trial that *Soto Palmer* Plaintiffs have satisfied the three *Gingles* preconditions for pursuing a claim
8 under section 2 of the VRA based on discriminatory results. Based on the same evidence, the State
9 cannot and does not intend to dispute that the totality of the evidence test likewise favors the *Soto*
10 *Palmer* Plaintiffs’ claim based on discriminatory results. Accordingly, the State believes that
11 resolution of the *Soto Palmer* litigation will render this case moot.

12 Additionally, the State disputes Plaintiff Garcia’s claim and intends to present evidence to
13 the contrary, if necessary.

14 Beyond mootness, the State does not intend to assert any affirmative defenses or
15 counterclaims.

16 Secretary Hobbs takes no position on Plaintiff Garcia’s claims or the State’s defenses.
17 Secretary Hobbs does not intend to pursue any affirmative defenses or counterclaims.

18 **III. ADMITTED FACTS**

19 The following are facts about which Plaintiff asserts there is no dispute and which Plaintiff
20 is prepared to admit:

21 **Party Information**

22 1. Plaintiff Benancio Garcia III is a United States citizen, is over the age of 18, and is
23 a registered voter in the State of Washington.

24 2. Plaintiff Garcia currently resides in Legislative District 15 at the following address:
25 311 Birch Avenue, Grandview, Washington 98930.

26 3. Plaintiff Garcia identifies his ethnicity as Hispanic, as the term is defined by the
27 U.S. Bureau of the Census.

1 4. Defendant Steve Hobbs is being sued in his official capacity as the Secretary of
2 State of Washington. Hobbs, as Secretary of State, “shall be the chief election officer for all federal,
3 state, county, city, town, and district elections.” RCW 29A.04.230.

4 5. Defendant Secretary of State is also responsible for receiving all declarations of
5 candidacy for the state legislative races for Legislative District 15.

6 6. Defendant State of Washington is a sovereign state of the United States of America.
7 The State of Washington is sued pursuant to the Court’s Order of Joinder. (Dkt. # 13.)

8 **Washington’s Demographics**

9 7. According to 2020 Census Data, over one million people in Washington identify as
10 Hispanic or Latino.

11 8. Washington received P.L. 94-171 data on August 12, 2021.

12 9. According to P.L. 94-171 data, Washington State’s population grew by 980,741
13 residents from 2010 to 2020, a growth rate of 14.5%.

14 10. According to 2020 Census data, the combined population of people who identify
15 as Hispanic or Latino in Yakima, Franklin, and Benton counties was 231,833.

16 11. According to 2010 and 2020 Census data, the Latino or Hispanic identified
17 population in Washington grew by 303,423 between 2010 and 2020.

18 12. According to 2020 Census Data, the total population of Yakima County identified
19 as Hispanic or Latino in 2020 was 130,049, approximately 50.7% of the county population.

20 13. According to 2020 Census Data, the total population of Franklin County identified
21 as Hispanic or Latino in 2020 was 52,445, approximately 54.2% of the county population.

22 14. According to 2020 Census Data, the total population of Benton County identified
23 as Hispanic or Latino in 2020 was 49,339, approximately 23.8% of the county population.

24 15. According to 2020 Census Data, the total population of Grant County identified as
25 Hispanic or Latino in 2020 was 42,401, approximately 42.8% of the county population.

26 16. According to 2020 Census Data, the total population of Adams County identified
27 as Hispanic or Latino in 2020 was 13,120, approximately 63.6% of the county population.

1 17. According to 2020 Census Data, the total population in Yakima County identified
2 as Hispanic or Latino grew by 20,579 between 2010 and 2020.

3 18. According to 2020 Census Data, the total population in Franklin County identified
4 as Hispanic or Latino grew by 12,441 between 2010 and 2020.

5 19. According to 2020 Census Data, the total population in Benton County identified
6 as Hispanic or Latino grew by 16,643 between 2010 and 2020.

7 20. According to 2020 Census Data, the total population in Grant County identified as
8 Hispanic or Latino grew by 8,238 between 2010 and 2020.

9 21. According to 2020 Census Data, the total population in Adams County identified
10 as Hispanic or Latino grew by 2,021 between 2010 and 2020.

11 22. According to the Census Bureau's 2020 5-Year American Community Survey
12 ("ACS") estimates, the CVAP of Hispanic or Latino identified individuals in Yakima County was
13 48,250, approximately 32.8% of the county CVAP.

14 23. According to the Census Bureau's 2020 ACS estimates, the CVAP of Hispanic or
15 Latino identified individuals in Franklin County was 17,695, approximately 35.2% of the county
16 CVAP.

17 24. According to the Census Bureau's 2020 ACS estimates, the CVAP of Hispanic or
18 Latino identified individuals in Benton County was 17,550, approximately 13% of the county
19 CVAP.

20 25. According to the Census Bureau's 2020 ACS estimates the CVAP of Hispanic or
21 Latino identified individuals in Grant County was 13,660, approximately 24% of the county
22 CVAP.

23 26. According to the Census Bureau's 2020 ACS estimates, the CVAP of Hispanic or
24 Latino identified individuals in Adams County was 3,805, approximately 41.4% of the county
25 CVAP.

26 **Geography of Legislative District 15 (LD 15)**

27 27. LD 15 includes parts of the Yakima Valley and Pasco.

1 28. LD 15 includes parts of Adams, Benton, Grant, Franklin, and Yakima counties.

2 29. LD 15 includes the City of Othello, in Adams County.

3 30. The cities of Yakima, Toppenish, Wapato, and Mabton are located in Yakima
4 County.

5 31. LD 15 contains the eastern portion of Yakima County.

6 32. LD 15 does not include the cities of Wapato, Toppenish, and Mabton.

7 **Procedural Issues**

8 33. Jurisdiction for Plaintiff’s claim for costs and attorneys’ fees is based upon 42
9 U.S.C. § 1988, and 52 U.S.C. § 10310(e).

10 34. Venue is proper in this judicial district because a substantial part of the events or
11 omissions giving rise to Plaintiff’s claim occurred in this district.

12 35. Venue is also proper in this district as Defendant Hobbs is a state official
13 performing his official duties in the Western District of Washington.

14 36. Defendant State of Washington is properly joined as a Defendant in this case. (*See*
15 *Dkt. # 13.*)

16 **The Redistricting Commission**

17 37. The Washington State Constitution directs that “[i]n January of each year ending
18 in one, a commission shall be established to provide for the redistricting of state legislative and
19 congressional districts.” WASH. CONST. art. II, § 43(1); *see also* RCW 44.05.030.

20 38. The Washington State Redistricting Commission (the “Commission”) is composed
21 of five members. WASH. CONST. art. II, § 43(2); *see also* RCW 44.05.030.

22 39. Each of the “leader[s] of the two largest political parties in each house of the
23 legislature . . . appoint one voting member.” WASH. CONST. art. II, § 43(2).

24 40. These four voting members select a fifth, nonvoting member to serve as the
25 Commission’s chairperson. *Id.*

26 41. The Washington Constitution requires that “[e]ach district . . . contain a
27 population . . . as nearly equal as practicable to the population of any other district” and that “[t]o

1 the extent reasonable, each district . . . contain contiguous territory, . . . be compact and
2 convenient, and . . . be separated from adjoining districts by natural geographic barriers, artificial
3 barriers, or political subdivision boundaries.” WASH. CONST. art. II, § 43(5).

4 42. Additionally, the Commission’s redistricting plan “shall not be drawn purposely to
5 favor or discriminate against any political party or group.” *Id.*

6 43. The plan must also, “insofar as practical, accomplish the following:” “[d]istrict
7 lines should be drawn so as to coincide with the boundaries of local political subdivisions and
8 areas recognized as communities of interest[.]” and that “[t]he number of counties and
9 municipalities divided among more than one district should be as small as possible.” RCW
10 44.05.090. And “Districts should be composed of convenient, contiguous, and compact territory.”
11 *Id.* “Land areas may be deemed contiguous if they share a common land border or are connected
12 by a ferry, highway, bridge, or tunnel.” *Id.* But “[a]reas separated by geographical boundaries or
13 artificial barriers that prevent transportation within a district should not be deemed contiguous[.]”
14 *Id.* Moreover, “[w]henever practicable, a precinct shall be wholly within a single legislative
15 district.” *Id.*

16 44. Districts must also “have a population as nearly equal as is practicable, excluding
17 nonresident military personnel, based on the population reported in the federal decennial census
18 as adjusted by RCW 44.05.140.” *Id.*

19 45. For a redistricting plan to be adopted, it must be approved by “[a]t least three of the
20 voting members” of the Commission. WASH. CONST. art. II, § 43(6).

21 46. The Commission is required to “complete redistricting . . . no later than November
22 15th of each year ending in one.” *Id.*; *see also* RCW 44.05.100.

23 47. “Upon approval of a redistricting plan,” the Commission “shall submit the plan to
24 the legislature[.]” which may amend the Commission’s plan within the first thirty days of the next
25 regular or special legislative session by “an affirmative vote in each house of two-thirds of the
26 members elected or appointed thereto.” RCW 44.05.100.

1 48. The Legislature’s amendment authority is limited, as it “may not include more than
2 two percent of the population of any legislative or congressional district.” *Id.* After such 30-day
3 period, “[t]he plan approved by the commission, with any amendment approved by the legislature,
4 shall be final . . . and shall constitute the districting law applicable to this state for legislative and
5 congressional elections, beginning with the next elections held in the year ending in two.” *Id.*

6 49. Article II, Section 43(6) states that “[i]f three of the voting members of the
7 commission fail to approve a plan within the time limitations provided in this subsection, the
8 supreme court shall adopt a plan by April 30th of the year ending in two in conformance with the
9 standards set forth in subsection (5) of this section.”

10 50. Under RCW 44.05.100, “[i]f three of the voting members of the commission fail to
11 approve and submit a plan within the time limitations provided in subsection (1) of this section,
12 the supreme court shall adopt a plan by April 30th of the year ending in two. Any such plan
13 approved by the court is final and constitutes the districting law applicable to this state for
14 legislative and congressional elections, beginning with the next election held in the year ending in
15 two. This plan shall be in force until the effective date of the plan based on the next succeeding
16 federal decennial census or until a modified plan takes effect as provided in RCW 44.05.120(6).”

17 51. Following the adoption of a plan, the Commission is required to cease operations
18 by July 1st of the year ending in two unless the term is extended. RCW 44.05.110.

19 52. “If a commission has ceased to exist, the legislature may, upon an affirmative vote
20 in each house of two-thirds of the members elected or appointed thereto, adopt legislation
21 reconvening the commission for the purpose of modifying the redistricting plan.” RCW 44.05.120.

22 53. All districting plans must comply with the United States Constitution.

23 54. The Secretary of State is the State of Washington’s current custodian of the
24 Commission’s official record for purposes of reprecincting and election administration. RCW
25 44.05.110.

1 **Previous Redistricting in the Yakima Valley**

2 55. Over the past 90 years, what is now LD 15 has changed during each round of
3 redistricting.

4 56. Historically, the District has covered a portion of Yakima County.

5 57. From 1982 through 2001, it also included portions of neighboring counties, but
6 never Othello or Pasco.

7 **2021 Redistricting Process**

8 58. On December 10, 2020, the Speaker of the Washington House of Representatives
9 announced the appointment of April Sims as a Commissioner representing the House Democratic
10 Caucus and the Senate Majority Leader announced the appointment of Brady Piñero Walkinshaw
11 as a Commissioner representing the Senate Democratic Caucus.

12 59. On January 15, 2021, the Senate Minority Leader announced the appointment of
13 Joe Fain as a Commissioner representing the Senate Republican Caucus and the House Minority
14 Leader announced the appointment of Paul Graves as a Commissioner Representing the House
15 Republican Caucus.

16 60. On January 30, 2021, the four voting Commissioners appointed Sarah Augustine
17 as the nonvoting, fifth member and Chair of the Commission.

18 61. Between February 2021 and November 2021, the Commission had Regular
19 Business Meetings, Special Business Meetings, and Public Outreach Meetings to develop
20 districting plans.

21 62. On September 21, 2021, each of the four voting Commissioners released a proposed
22 legislative district map to the public.

23 63. No Commissioner proposed a version of LD 15 that resembled the district as drawn
24 by the Commission's final redistricting plan. For example, no proposal, contained the cities of
25 Pasco or Othello, and none contained a majority HCVAP.

26 64. The map of LD 15 initially proposed by Commissioner Sims combined the Yakama
27 Indian Reservation with parts of Yakima and communities along Interstate 82 to Grandview.

1 Commissioner Sims stated that her map “recognizes the responsibility to create districts that
2 provide fair representation for communities of interest” and that “[m]aintaining and creating
3 communities of interest” and “[c]entering and engaging communities that have been historically
4 underrepresented” were “values guid[ing]” her efforts.

5 65. The map of LD 15 initially proposed by Commissioner Walkinshaw merged cities
6 around Yakima into a district that stretched north beyond Ellensburg and south to the Columbia
7 River. Commissioner Walkinshaw stated his goals were to “[m]aintain and unite communities of
8 interest and reduce city splits” and “prioritize[e] the needs of . . . historically underrepresented
9 communities.” His plan also “[c]reate[d] a majority-Hispanic/Latino district” in the neighboring
10 Legislative District 14, which was “55.5% [Hispanic/Latino] by Voting Age Population (VAP)”
11 and “65.5% people-of-color by VAP.”

12 66. The map of Legislative District 15 as proposed by Commissioner Fain included
13 parts of the City of Yakima and consisted of the eastern third of Yakima County. Commissioner
14 Fain “place[d] existing school district boundaries at the cornerstone of his legislative framework.”
15 His plan also “create[d] seven majority minority districts statewide, and one additional majority-
16 minority citizen voting age population (CVAP) district.”

17 67. The map of Legislative District 15 as proposed by Commissioner Graves combined
18 the northeastern portion of Yakima County, including some of the cities along Interstate 82, with
19 most of Benton County apart from Richland and Kennewick. Commissioner Graves’s plan
20 “focuse[d] on communities of interest and is not drawn to favor either party or incumbents” and
21 featured eight “majority-minority” districts.

22 68. On or about October 19, 2021, the Washington State Senate Democratic Caucus
23 circulated a presentation by Dr. Matt Barreto, a professor of political science and Chicana/o studies
24 at UCLA and co-founder of the UCLA Voting Rights Project. Dr. Barreto was hired by the
25 Washington Senate Democratic Caucus, not by the Commission, the State of Washington, or the
26 Legislature.

1 69. Subsequently, Commissioners Fain and Graves and the Washington State
2 Republican Party commissioned a legal analysis from a law firm headquartered in Washington
3 State, Davis Wright Tremaine, that concluded a majority-minority district was not required in the
4 Yakima Valley.

5 70. On October 25, 2021, Commissioners Walkinshaw and Sims submitted revised
6 maps to the public.

7 71. Commissioners Sims and Graves were primarily responsible for negotiating and
8 drafting the legislative maps.

9 72. Shortly before midnight on November 15, 2021, the Commission voted
10 unanimously to approve a legislative redistricting plan.

11 73. And, shortly after midnight on November 16, 2021, the Commission voted to
12 approve a formal resolution adopting the redistricting plan and also voted to approve a letter
13 transmitting the plan to the Legislature. Thereafter, the Commission transmitted the resolution and
14 letter to the secretary of the Senate and the chief clerk of the House of Representatives.

15 74. On December 3, 2021, the process by which the November 15 deadline was met
16 was deemed to be compliant with Washington law by the Washington Supreme Court. *Order re:*
17 *Wash. State Redistricting Commission's Letter*, No. 25700-B-676, 504 P.3d 795 (Wash. 2021).

18 75. In House Concurrent Resolution 4407, the legislature amended the map submitted
19 by the Commission to the Washington Supreme Court. It added seven and removed two Census
20 Blocks to LD 15. Each of the added and removed Census Blocks had zero population change.

21 76. LD 15 in the Enacted Plan has a Hispanic or Latino CVAP of 50.02% according to
22 2019 5-Year ACS estimates and 51.5% according to 2020 5-year ACS estimates.

23 **Subsequent Election in LD 15**

24 77. The redistricting plan approved by the Commission, together with the Legislature's
25 amendments, constitutes Washington state's districting law for legislative elections, which began
26 with the 2022 election.

1 78. Elections have already taken place under the new legislative maps, whereupon, in
2 LD-15, Nikki Torres, a Hispanic, female whose stated party preference is “Prefers Republican
3 Party,” prevailed over her opponent, whose stated party preference is “Prefers Democratic Party,”
4 in the State Senate race by approximately 68% to 32%.

5 79. In the 2022 LD 15 senate race, Lindsey Keesling, a candidate whose stated party
6 preference is “Prefers Democratic Party,” advanced to the general election ballot after running as
7 a write-in candidate during the primary election.

8 **Other Litigation**

9 80. Three recent cases have applied the federal VRA and Washington Voting Rights
10 Act to elections in Yakima and Pasco.

11 81. In *Montes v. City of Yakima*, the court concluded that Yakima’s at-large voting
12 system for city council elections violated Section 2 of the VRA. 40 F. Supp. 3d 1377 (E.D. Wash.
13 2014). The court reviewed evidence regarding the three *Gingles* factors and concluded that each
14 was satisfied with respect to Latino voters in the City of Yakima. *Id.* at 1390-1407. The Court also
15 found that the totality of the circumstances demonstrated that the City’s electoral process was not
16 equally open to participation by Latino voters after analyzing the Senate Factors. *Id.* at 1408-14.

17 82. In *Glatt v. City of Pasco*, a challenge to Pasco’s at-large voting system, the court
18 entered a consent decree in which the parties stipulated to each *Gingles* factor as well as a finding
19 that the totality of the circumstances shows an exclusion of Latinos from meaningfully
20 participating in the political process. *See* Partial Consent Decree, *Glatt v. City of Pasco*, No. 4:16-
21 CV-05108-LRS, ECF No. 16 ¶¶ 15-22 (E.D. Wash. Sep. 2, 2016); *see also* Mem. Op. and Order,
22 *Glatt v. City of Pasco*, No. 4:16-CV-05108-LRS, ECF No. 40 at 29 (E.D. Wash. Jan. 27, 2017).

23 83. In *Aguilar v. Yakima County*, No. 20-2-0018019 (Kittitas Cnty. Super. Ct.), a
24 challenge against the at-large voting system used in Yakima County, the parties entered and the
25 court approved a settlement agreement finding that the conditions for a violation of the Washington
26 Voting Rights Act, including a showing of racially polarized voting, had been met in Yakima
27 County.

1 **2024 Elections**

2 84. Under recently enacted legislation, statutory deadlines for the 2024 election cycle
3 include RCW 29A.16.040, which will require precinct boundaries be drawn no later than 7 days
4 before the first day for candidates to file for the primary election, and RCW 29A.24.050, which
5 sets the first Monday in May as the first day for candidates to declare their candidacy.

6 85. Should the Court determine a new legislative district map must be drawn as a
7 remedy, March 25, 2024 is the latest date a finalized legislative district map must be transmitted
8 to counties without significantly disrupting the 2024 election cycle.

9 **IV. ISSUES OF LAW**

10 The following are the issues of law to be determined by the court:

11 1. Whether Plaintiff's claim is moot in light of the Court's disposition (if any) in *Soto*
12 *Palmer v. Hobbs*.

13 2. Whether Plaintiff has established that race or ethnicity predominated in the drawing
14 by the Commission and adoption by the Legislature of Legislative District 15 in violation of the
15 Fourteenth Amendment to the U.S. Constitution.

16 3. If the Court finds that race or ethnicity predominated in the drawing and adoption
17 of Legislative District 15, whether the Commission and Legislature's race-based decision was
18 required to serve the compelling governmental interest of complying with Section 2 of the Voting
19 Rights Act.

20 4. Finally, if the map is stricken, the appropriate state entity to be given the first
21 opportunity to redraw Legislative District 15 in compliance with the Fourteenth Amendment to
22 the U.S. Constitution.

23 **V. EXPERT WITNESSES**

24 The Parties incorporate by reference the Expert Witness section from the Pretrial Order
25 submitted to the Court in *Soto Palmer, et. al v. Hobbs, et al*. A copy of the Pretrial Statement in
26 *Soto Palmer* is attached hereto as Exhibit 1.

1 **VI. OTHER WITNESSES**

2 The Parties incorporate by reference the Other Witness section from the Pretrial Order
3 submitted to the Court in *Soto Palmer, et. al v. Hobbs, et al.* A copy of the Pretrial Statement in
4 *Soto Palmer* is attached hereto as Exhibit 1.

5 **VII. EXHIBITS**

6 The Parties incorporate by reference the Exhibits section from the Pretrial Order submitted
7 to the Court in *Soto Palmer, et. al v. Hobbs, et al.*, as the same exhibit numbers will be used by all
8 Parties at the consolidated trial. A copy of the Pretrial Statement in *Soto Palmer* is attached hereto
9 as Exhibit 1.

10 **VIII. DEPOSITIONS**

11 Pursuant to LCR 32, the Parties in *Soto Palmer* have offered deposition designations,
12 objections to those designations, and responses to objections with the Pretrial Statement in *Soto*
13 *Palmer*. The Parties agree that those designations, and the Court’s rulings on objections, apply to
14 this action.

15 **IX. ACTION BY THE COURT**

16 (a) This case is scheduled for trial without a jury on June 5, 2023, at 8:30 a.m.

17 (b) Trial briefs shall be submitted to the Court on or before May 31, 2023.

18 This order has been approved by the parties as evidenced by the signatures of their counsel. This
19 order shall control the subsequent course of the action unless modified by a subsequent order. This
20 order shall not be amended except by order of the court pursuant to agreement of the parties or to
21 prevent manifest injustice.

22
23 DATED this _____ day of _____, 2023.

24
25 _____
The Honorable Robert S. Lasnik
UNITED STATES DISTRICT JUDGE

26
27 FORM APPROVED

1 Presented by:

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing document with the Clerk of the Court of the United States District Court for the Western District of Washington through the Court's CM/ECF System, which will serve a copy of this document upon all counsel of record.

DATED this 24th day of May, 2023.

Respectfully submitted,

s/ Andrew R. Stokesbary
Andrew R. Stokesbary, WSBA No. 46097

Counsel for Plaintiff

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