

Hearing date: _____
Hearing time: _____
Judge/Calendar:
Mary Sue Wilson / Civil

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

WASHINGTON COALITION FOR
OPEN GOVERNMENT,

Plaintiff,

v.

No. 21-2-02069-34

CONSENT DECREE AND FINAL
JUDGMENT

THE STATE OF WASHINGTON, a state
government, acting through THE
WASHINGTON STATE
REDISTRICTING COMMISSION, a
Washington State Agency; and SARAH
AUGUSTINE, APRIL SIMS, PAUL
GRAVES, BRADY PIÑERO
WALKINSHAW, and JOE FAIN, in their
individual capacities as Commissioners of
the Washington State Redistricting
Commission,

Defendants.

ARTHUR WEST,

Plaintiff,

v.

WASHINGTON STATE
REDISTRICTING COMMISSION, et al.,

Defendants.

No. 21-2-01949-34

CONSENT DECREE AND FINAL
JUDGMENT

I. INTRODUCTION

The above-named parties come before the Court, by and through their attorneys of record,

1 and stipulate to entry of the following findings of fact, conclusions of law, and final judgment or
2 decree:

3 **II. FACTUAL FINDINGS**

4 2.1. On December 9, 2021, Plaintiff Washington Coalition for Open Government
5 (“WCOG”) filed its Complaint pursuant to Washington’s Uniform Declaratory Judgments Act (the
6 “UDJA”), Washington’s Open Public Meetings Act (“OPMA”), and article II, § 43 of the
7 Washington Constitution against Defendants the State of Washington, the Washington State
8 Redistricting Commission (the “Commission”), and its five Commissioners. On November 16,
9 2021, Plaintiff Arthur West filed his Complaint against the Commission, its Commissioners, and
10 the State of Washington pursuant to OPMA and the UDJA.
11

12 2.2. Plaintiffs conducted discovery, including taking the depositions of the five
13 Commissioners. The parties conferred regarding material facts of relevance to these proceedings,
14 which are set forth below.
15

16 2.3. The conduct at issue in these related matters involves state redistricting as those
17 duties and responsibilities are set forth at article II, section 43 of the Washington Constitution,
18 RCW 44.05, and WAC 417.
19

20 2.4. Washington voters established the current redistricting process by constitutional
21 amendment in 1983.

22 2.5. Article II, section 43 of the Constitution provides a process for establishing a five-
23 member bipartisan redistricting commission in every year ending in one.

24 2.6. Each of the four legislative leaders of the two largest political parties in each house
25 of the legislature appoints a single member to the commission, and those four voting members
26 choose a fifth, non-voting member to serve as the commission’s chair.
27

1 2.7. In 2021, Joseph Fain, Paul Graves, April Sims, and Brady Piñero Walkinshaw were
2 appointed as the four voting members of the Commission (the “voting Commissioners”).

3 2.8. The Commissioners unanimously selected Sarah Augustine to serve as the non-
4 voting Chair of the Commission.

5 2.9. At least three voting Commissioners are necessary to constitute a quorum.

6 2.10. At a Commission meeting on January 27, 2021, an Assistant Attorney General
7 (“AAG”) gave an OPMA presentation to the Commission. The AAG instructed the Commissioners
8 that OPMA training was required and stated that his presentation would not include “enough detail
9 . . . to satisfy both” OPMA’s and the Public Records Act’s training requirements. The AAG
10 encouraged Commissioners to complete the requisite training to include review of the self-guided
11 trainings on the AGO website, but not all of them did so.

12 2.11. To finalize its redistricting work, the Commission held a virtual public meeting on
13 November 15, 2021, the Commission’s deadline both to approve a redistricting plan (under article
14 II, section 43(6) of the Washington Constitution) and to submit the plan to the legislature (under
15 RCW 44.05.100(1)). In the event of a failure by the Commission to approve a redistricting plan by
16 the deadline, jurisdiction falls to the Washington Supreme Court to adopt a plan by April 30, 2022.
17 *See Wash. Const. art. II, § 43(6).*

18 2.12. Commission staff booked meeting space for the Commissioners in Federal Way,
19 starting on Saturday, November 13, 2021. Commissioners Graves and Sims spent part of the day
20 on November 13 together in Federal Way working on the legislative redistricting plan, facilitated
21 at times by Commissioner Augustine. Commissioners Fain and Walkinshaw arrived in Federal
22 Way on Sunday, November 14, spending part of the day working on the congressional redistricting
23 plan.

1 2.13. On November 14 and 15, 2021, the Commissioners, some Commission staff, and
2 legislative caucus staff undertook negotiations and redistricting work at the Hampton Inn in
3 Federal Way. When meeting with one another, the voting Commissioners met in two-
4 Commissioner “dyads” to avoid constituting a quorum. Each dyad was composed of one
5 Democratic-appointed Commissioner and one Republican-appointed Commissioner. One dyad
6 worked to develop a proposal for the congressional redistricting plan while the other worked to
7 develop a proposal for the legislative redistricting plan.
8

9 2.14. Over the course of November 14 and 15, 2021, the Democratic-appointed
10 Commissioners communicated with one another and with caucus staff on their dyads’ negotiations,
11 as did the Republican-appointed Commissioners. Many (though not all) of those communications
12 occurred outside open public meetings of the whole Commission and outside of public view—
13 whether in person or by text message, email, telephone, or videoconference. Caucus staff also
14 communicated by instant messaging.
15

16 2.15. On November 15, 2021, the Commission convened a regular business meeting at
17 7:00 p.m. via Zoom. The agenda for that meeting was to discuss and adopt a final redistricting
18 plan. The Commission’s deadline to approve a final redistricting plan was midnight. The public
19 could observe the meeting via YouTube or TVW.
20

21 2.16. Within minutes of the Commission convening its regular meeting, the
22 Commissioners exited the public forum to continue their redistricting plan negotiations.

23 2.17. The Commissioners returned to the public meeting to provide updates six times
24 throughout the evening. In total, the regular meeting was offline for more than four hours, with
25 Commissioners working in two-Commissioner dyads to develop redistricting plan proposals to
26 bring before the full Commission. The Republican-appointed Commissioners communicated with
27

1 one another and with caucus staff on their dyads' negotiations, as did the Democratic-appointed
2 Commissioners.

3 2.18. The Commissioners developed proposals based on past election data, geographic
4 boundaries, and other criteria. Caucus staff worked to translate those proposals into actual maps.
5 The caucus staff did not complete final legislative or congressional district maps before the
6 midnight deadline.
7

8 2.19. The Commissioners had no final maps when, a few minutes before midnight, the
9 Commissioners returned to the public meeting to take "action." When returning on November 15,
10 2021 and into November 16, 2021, the voting Commissioners unanimously adopted four motions
11 without discussion: approval of a final congressional plan, approval of a final legislative plan,
12 approval of a resolution, and approval of a transmittal letter. At the time of the motions, there were
13 no final congressional or legislative maps in existence for the Commissioners to approve that
14 reflected district boundaries. The Commissioners did not, at the time of the votes, articulate district
15 boundaries in any motion. Each commissioner voted to approve what he or she understood were
16 frameworks agreed upon by each dyad to bring to a public vote in earlier negotiations. The
17 frameworks were not expressed in any final writing. Each commissioner had his or her own
18 understanding of the frameworks. The frameworks did not include definite district boundaries,
19 legal descriptions of district boundaries, or shapefiles. More work was needed to express the
20 districts in a final, recordable form.
21

22 2.20. OPMA provides, in relevant part: "No governing body of the public agency shall
23 adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to
24 the public." RCW 42.30.060(1). OPMA also provides, in relevant part: "No governing body of a
25 public agency at any meeting required to be open to the public shall vote by secret ballot." RCW
26
27

1 42.30.060(2). The Commission publicly voted. The parties agree that the Commission did not
2 “adopt any ordinance, resolution, rule, regulation, order, or directive” at a meeting that was not
3 “open to the public” under RCW 42.30.060(1). The parties dispute whether a vote on an
4 unpublished framework constitutes a “vote by secret ballot” under RCW 42.30.060(2).
5

6 2.21. The Commission did not take a vote on or otherwise approve the final maps before
7 e-mailing a resolution, transmittal letter, congressional map, and legislative map to the Supreme
8 Court on November 16, 2021.

9 2.22. The Commission did not transmit any report, plan, map, resolution, nor transmittal
10 letter to the Legislature on November 15, 2021.

11 2.23. Shortly after midnight on November 16, 2021, the four voting Commissioners and
12 the Chair were all present in a large ballroom at the Hampton Inn in Federal Way. Commissioners
13 observed and gave input while caucus staff completed a final legislative map and a final
14 congressional map.
15

16 2.24. While in the ballroom in the early morning of November 16, 2021, the
17 Commissioners discussed how to communicate with the media. The Commissioners discussed
18 acknowledging that they had not met the deadline and did not finalize the maps until after the
19 deadline.
20

21 2.25. The Commissioners also discussed when the final maps should be posted to the
22 Commission’s website. The congressional map was posted to the website early in the morning of
23 November 16, 2021, without the corresponding legislative map, which was not yet complete. At
24 the request of some Commissioners, the Commission temporarily took down the congressional
25 map from the Commission’s website. When the legislative map was complete, in the afternoon or
26 evening of November 16, 2021, both it and the congressional map together were posted to the
27

1 Commission's website.

2 2.26. The Commission's transmittal to the Legislature on November 16, 2021 at 12:13
3 a.m. did not include final maps expressing agreed upon boundaries.

4 2.27. The Commission finalized the congressional district boundaries in a map and
5 corresponding descriptions in the early morning of November 16, 2021.

6 2.28. The Commission finalized the legislative district boundaries in a map and
7 corresponding descriptions in the afternoon or evening of November 16, 2021.

8 2.29. On November 16, 2021, the Commission transmitted by email its final redistricting
9 plan with legislative and congressional district maps to the Chief Justice of the Washington
10 Supreme Court. Acknowledging the Commission's failure to adopt a redistricting plan by the
11 midnight deadline, Commissioner Augustine's letter expressed the "hope of all commissioners
12 that" the enclosed maps would "be given due consideration" by the Court.

13 2.30. On November 18, 2021, the Supreme Court directed Commissioner Augustine to
14 file a sworn declaration "with a detailed timeline of the events of November 15, 2021, and
15 November 16, 2021, relevant to the commission's compliance with its obligations under article II,
16 section 43 subsections (6) and (11) of the Washington State Constitution and RCW 44.05.100."
17 On November 22, Commissioner Augustine submitted her declaration. WCOG asserts
18 Commissioner Augustine's declaration was not accurate.

19 2.31. On December 3, 2021 before this matter came before it, the Supreme Court issued
20 an order "accept[ing] the facts attested to by the chair of the Commission as accurate," and
21 "conclud[ing] it is not necessary for the court to assume responsibility for adoption of redistricting
22 maps under the present circumstances." The Court further concluded that "the Commission
23 complied with its obligation under article II, subsection 43(6) of the Washington Constitution to
24
25
26
27

1 ‘complete redistricting’ by [November 15, 2021], and it substantially complied with the essential
2 purpose of RCW 44.05.100 to approve and transmit a plan to the legislature by that date.”

3 2.32. On December 10, 2021, Plaintiff WCOG filed an original action in the Supreme
4 Court (No. 100483-4) with substantially similar allegations and claims as in its Complaint in this
5 matter. Separately, on December 14, 2021, Plaintiff Arthur West filed in the Supreme Court an
6 “Original Action to Determine the Validity of the 2021 Washington State Redistricting Plan” (No.
7 100469-9). Both WCOG’s and West’s original actions sought relief that included invalidation of
8 the final congressional and legislative redistricting plans adopted by the Commission and
9 transmitted to the Supreme Court.

10
11 2.33. On January 6, 2022, the Supreme Court, over the parties’ joint request, declined to
12 exercise original jurisdiction over WCOG’s or West’s claims, dismissing both actions.

13
14 2.34. The Washington Constitution mandates specific deadlines for the completion of the
15 decennial redistricting process. Const. art. II, § 43(6)–(7). The Commission must complete
16 redistricting no later than November 15 of each year ending in one, but if three of the voting
17 members of the Commission fails to approve a redistricting plan, the Supreme Court must adopt a
18 plan by April 30 of each year ending in two. The Legislature may amend the redistricting plan but
19 must do so within 30 days of session after receiving the Commission’s redistricting plan.
20 Challenges to redistricting decisions that may affect those constitutional deadlines are time-
21 sensitive.

22
23 2.35. On February 8, 2022, the Legislature passed House Concurrent Resolution 4407,
24 adopting an amended version of the plan submitted to it by the Commission on November 16,
25 2021.

26 2.36. Under RCW 44.05.110(2) the Commission shall cease to exist on July 1, 2022,
27

1 private. The Commission may not negotiate an agreed upon framework for a final redistricting
2 plan in private.

3 4.3.3 Before the Commission considers any motion to approve a final redistricting plan,
4 the Commission shall make publicly available the plan that is the subject of the motion, inclusive
5 of the congressional and legislative district maps that depict the boundaries contemplated by the
6 motion.
7

8 4.3.4 Any final redistricting plan approved in conformance with article II, section 43(6)
9 of the Constitution shall include completed final maps showing the division of the state into
10 congressional or legislative districts and complete descriptions of each district using official census
11 units, such as tracts and blocks, sufficient to codify the plan, at the time of any vote to approve the
12 plan.
13

14 4.3.5 The Commission shall open for comment by the Commissioners any motion to
15 approve a final redistricting plan prior to voting on the motion.

16 4.3.6 The Commission shall exercise reasonable diligence to adopt rules effectuating the
17 requirements of this subsection by July 1, 2022.

18 4.4 **THE REDISTRICTING PLAN UNDER OPMA:** Based upon the Supreme
19 Court’s December 3, 2021 Order No. 25700-B-676 affirming the Redistricting Plan transmitted to
20 it on November 16, 2021; the Supreme Court’s decision that “the primary purpose of achieving a
21 timely redistricting plan would be impeded, not advanced, by rejecting the Commission’s
22 completed work”; WCOG’s express interests in transparency and not merits of the maps; the
23 Supreme Court’s January 6, 2022 Order declining original jurisdiction to hear WCOG’s complaint;
24 and the Legislature’s adoption of the Redistricting Plan as amended on February 8, 2022, which
25 per RCW 44.05.100(3) shall be in effect until the effective date of the plan based upon the next
26
27

1 succeeding federal decennial census or until a modified plan takes effect as provided in RCW
2 44.05.120(6); WCOG's and West's requested relief to invalidate the Redistricting Plan under
3 OPMA is denied.

4 4.5 **PENALTIES:** Pursuant to RCW 42.30.120(1), each Commissioner shall pay
5 \$500.00 (\$2,500.00 total) to WCOG (\$1,250.00) and West (\$1,250.00).
6

7 4.6 **WCOG'S PETITION FOR JUDICIAL REVIEW:** WCOG's Petition for
8 Judicial Review, *Washington State Coalition for Open Government v. State*, No. 22-2-00065-34
9 (Thurston Cnty. Super. Ct.), shall be dismissed voluntarily upon Commission approval of rules in
10 conformance with this Decree and Judgment. The parties agree the petition for judicial review
11 shall be stayed pending adoption of agency rules before the Commission ceases to exist in July.
12

13 4.7 **ATTORNEY'S FEES AND COSTS:** Pursuant to RCW 42.30.120(4), within 14
14 days of entry of this decree, the Commission shall pay to WCOG reasonable attorney's fees and
15 costs incurred up to the date this Stipulation is fully executed by the parties in the amount of
16 \$106,743.00 for attorney's fees and \$13,428.78 for costs. The rates of \$450.00 for Attorney Mell,
17 \$250.00 for Attorney Mell's paralegals, and \$275.00 for Attorney Bruner are reasonable and the
18 time incurred of 202.8 hours for Attorney Mell, 38 hours for Attorney Bruner, and 13.2 hours for
19 Attorney Mell's paralegals, as well as the costs incurred, were reasonably necessarily incurred to
20 achieve this outcome.
21

22 4.8 **ENFORCEMENT:** The Superior Court retains jurisdiction to enforce the terms of
23 this Consent Decree.

24 4.9 **FINAL JUDGMENT:** Upon approval and entry of this Consent Decree by the
25 Court, this Consent Decree shall constitute final judgment of the Court as to WCOG; Arthur West;
26
27

1 the Commission; Commissioners Sarah Augustine, Joe Fain, Paul Graves, April Sims, and Brady
2 Piñero Walkinshaw; and the State of Washington.

3 Dated this ____ day of February, 2022 at Olympia, WA.

5 _____
6 Honorable Mary Sue Wilson
7 Superior Court Judge

8 DATED this ____ day of February, 2022.

9 III BRANCHES LAW, PLLC

PACIFICA LAW GROUP LLP

10 By _____
11 Joan K. Mell, WSBA # 21319
12 1019 Regents Blvd., Ste 204
13 Fircrest, WA 98466

By _____
Zachary J. Pekelis, WSBA #44557
Christina E. Jaccard, WSBA
#55592

14 Casey Bruner
15 WSBA # 50268
16 WITHERSPOON KELLEY
17 422 W. Riverside Ave., Ste 1100
18 Spokane, WA 99201

*Attorneys for Defendants
Washington State Redistricting
Commission, Sarah Augustine Joe
Fain, Paul Graves, April Sims, and
Brady Walkinshaw*

*Attorneys for Plaintiff
Washington Coalition For Open
Government*

19 WASHINGTON STATE ATTORNEY
20 GENERAL'S OFFICE

21 _____
22 Arthur West
23 120 State Ave. NE #1497
24 Olympia, WA 98501

By _____
Andrew R.W. Hughes, WSBA
#49515
Cristina Sepe, WSBA #53609

25 *Plaintiff*

*Attorneys for Defendant State of
Washington*