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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

SUSAN SOTO PALMER, ALBERTO MACIAS, BRENDA RODRIGUEZ GARCIA, FABIOLA LOPEZ, CATY PADILLA, EVANGELINA AGUILAR, LIZETTE PARRA, HELIODORA MORFIN, and SOUTHCENTRAL COALITION OF PEOPLE OF COLOR FOR REDISTRICTING

Plaintiffs,

v.

Secretary of State STEVEN HOBBS, in his official capacity as Secretary of State of Washington; LAURIE JINKINS, in her official capacity as Speaker of the Washington State House of Representatives; and ANDY BILLIG, in his official capacity as Majority Leader of the Washington State Senate

Defendants.

Case No.: 3:22-cv-5035-RSL

JOINT RULE 26(F) REPORT AND DISCOVERY PLAN

Judge: Robert S. Lasnik

Date Action filed: January 19, 2022

Date set for trial:

The parties, by their undersigned counsel, held a conference pursuant to Rule 26(f) and this Court’s order (ECF No. 32) on February 24, 2022. The parties hereby jointly submit the following report consistent with FRCP 26(f), LCR 26(f), and this Court’s February 10, 2022 Order:

1. Nature and Complexity of Case

This case involves a challenge under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, to legislative district 15 in the Washington state legislative district plan. Plaintiffs allege legislative district 15 dilutes the voting strength of Latino voters in the

1 Yakima Valley region. Defendants are members of the State government, sued in their respective
2 official capacities. With regard to complexity, the parties anticipate that resolving the merits of
3 this case would require expert testimony and discovery from third parties or parties not presently
4 before this Court.

5 Defendants Jinkins's and Billig's Position:

6 Defendant Laurie Jinkins, the Speaker of the Washington State House of Representatives,
7 and Defendant Andy Billig, Majority Leader of the Washington State Senate, assert that they are
8 not proper parties to this lawsuit. The Washington State Constitution vests the drawing (and
9 modification) of legislative and congressional districts in the bipartisan Washington State
10 Redistricting Commission, not the state Legislature (and therefore decidedly not the Legislature's
11 leaders). For the reasons stated in Defendants Jinkins's and Billig's pending Motion to Dismiss,
12 they should be dismissed from this case.

13 In addition, redistricting is bipartisan in nature, yet Plaintiffs elected to sue legislative
14 leaders from a single party. Litigating this case without participation from both political parties
15 may lead to an adjudication on less than a full consideration of relevant issues, particularly given
16 the position set forth in Defendant Hobbs' "Notice That Defendant Hobbs Takes No Position."
17 Defendants Jinkins and Billig therefore respectfully request that the Court defer entering an order
18 setting any substantive case deadlines and case management issues until after the party joinder
19 deadline and a ruling on Defendants Jinkins's and Billig's motion to dismiss.

20 To the extent the Court intends to enter a case management order establishing deadlines
21 and discovery limits for this case prior to the resolution of the party joinder/dismissal issues, and
22 while reserving their objection and all rights to seek modification if appropriate, Defendants assert
23 that the Court should provide sufficient time for any parties who wish to assert a defense to do so.
24 With this consideration in mind, Defendants Jinkins's and Billig's alternative positions are set
25 forth below.

1 Plaintiffs' Position:

2 As Plaintiffs will explain in their forthcoming opposition to Defendants Jinkins's and
3 Billig's motion to dismiss, Defendants Jinkins and Billig, the two representative leaders of the
4 Washington State Legislature, are proper parties in this suit. The Washington Legislature has
5 exclusive authority to reconvene the Washington Redistricting Commission for purposes of
6 modifying the redistricting plan. RCW 44.05.120. And as leaders of the State's legislative
7 chambers, Defendants Jinkins and Billig have sufficient connection to the legislative adoption of
8 a potential remedy map to make them proper parties in this case. *See Ex Parte Young*, 209 U.S.
9 123 (1908).

10 In any event, the pending motion to dismiss has no bearing on continued litigation of the
11 merits. Even if the Court were to dismiss Defendants Jinkins and Billig from the suit, the case
12 would proceed against Defendant Hobbs. No party disputes that Defendant Hobbs, the official
13 tasked with ensuring elections are conducted in accordance with the state's redistricting plan, is a
14 proper defendant in this suit. The Secretary's position on the merits of Plaintiffs' claims does not
15 change this fact, nor does it necessitate joinder of any additional parties. The Washington
16 Redistricting Commission is accordingly not a necessary party here. In fact, in a March 7, 2022
17 vote, the Commission opted not to take steps to intervene in this case. Plaintiffs have sued the
18 proper officials to remedy their asserted harms and the case should proceed against those parties.
19 Plaintiffs respectfully request that the Court enter a case management order that ensures steady
20 and efficient resolution of their claims.

21 **2. Proposed Deadline for joining additional parties.**

22 Plaintiffs and Defendants propose that the deadline for joining additional parties be four
23 weeks after this Court rules on the motion to dismiss filed by Defendants Jinkins and Billig.

24 **3. Do the parties consent to a magistrate judge?**

25 No.

1 **4. The existence of any related cases pending in this or other jurisdictions and a**
2 **proposal for how to handle them.**

3 There are no related cases currently pending.

4 **5. Whether initial disclosures were timely made under FRCP 26(a)(1) and any**
5 **issues regarding initial disclosures.**

6 Plaintiffs and Defendants timely served their initial disclosures under FRCP 26(a)(1) on
7 March 3, 2022.

8 **6. What changes, if any, should be made in the timing or form of expert and**
9 **pretrial disclosures under FRCP 26(a)(2)-(4).**

10 Pursuant to FRCP 26(a)(2), the parties propose the following schedule for expert
11 disclosures:

12 Plaintiffs:

13 Plaintiffs propose the following dates for expert disclosures:¹

14 Plaintiffs' experts' initial reports: June 24, 2022

15 Defendants' experts' response reports: July 22, 2022

16 Plaintiffs' experts' rebuttal reports: August 5, 2022

17 As stated above, Plaintiffs maintain that litigation of the merits, including expert discovery,
18 can and should proceed in due course regardless of the outcome of Defendant Jinkins and Billig's
19 motion to dismiss or the party joinder deadline.

20 Defendants Jinkins and Billig:

21 At minimum, any deadlines should provide for sufficient time following the resolution of
22 joinder/dismissal issues for the parties to conduct party and third-party fact discovery prior to
23 initial expert reports. Therefore, Defendants Jinkins and Billig propose initial expert reports and
24 disclosures occur 12 weeks after the resolution of joinder/dismissal issues, responsive reports 30
25 days later, and rebuttal reports 14 days after responsive reports.

26 ¹¹ Plaintiffs note that they propose these expert disclosure deadlines and a September 23 discovery
 deadline (*see* No. 13) under the assumption that trial will take place no later than December 8,
 2022 (*see* No. 16). Plaintiffs would propose adjusting these dates should the Court order a later
 trial date.

1 Defendant Hobbs:

2 Because Defendant Hobbs takes no position on whether the maps complied with the Voting
3 Rights Act, Defendant Hobbs may not prepare and submit expert reports with regards to the merits.
4 The parties do not anticipate any changes in the form or timing of pretrial disclosures under
5 FRCP 26(a)(3).

6 **7. The subjects, timing, and potential phasing of discovery, and how the parties**
7 **intend to manage discovery to promote the expeditious and inexpensive resolution of the**
8 **case, specifically including consideration of the items set forth in LCR 26(f)(1)(D).**

8 (i) Topics of Discovery:

9 Plaintiffs:

10 Plaintiffs' discovery will relate to the discriminatory intent or dilutive effect of the Enacted
11 Plan and will include discovery of any experts retained by the Defendants, as well as fact discovery
12 of Defendants, any fact witnesses identified by Defendants, and third-party witnesses.

13 Defendant Hobbs:

14 Because Defendant Hobbs takes no position on the merits of Plaintiffs' claims under
15 Section 2 of the Voting Rights Act, Defendant Hobbs does not anticipate promulgating significant
16 discovery. Discovery by Defendant Hobbs would be related to specific remedies proposed by
17 Plaintiffs.

18 Defendants Jinkins and Billig:

19 Defendants Jinkins and Billig, if they remain parties to this case, anticipate discovery
20 related to the maps proposed by Plaintiffs, demographic and other data used to assess and formulate
21 maps, any analysis performed regarding the composition of Legislative District 15, and Plaintiffs'
22 proposed remedies.

23 (ii) Timing of Discovery:

24 Plaintiffs:

25 Plaintiffs do not presently anticipate any need to deviate from the timing of discovery as
26 required by the Federal Rules of Civil Procedure and the Local Rules for this Court, but reserve

1 the right to revisit this position in the future if necessary.

2 Defendants Jinkins and Billig:

3 Defendants Jinkins and Billig request expedited disclosure of documents and information
4 relied upon by Plaintiffs' experts for any declarations or opinions relating to Washington State
5 legislative and congressional redistricting.

6 (ii) Phasing of Discovery:

7 Plaintiffs:

8 Plaintiffs anticipate that discovery will proceed with written discovery followed by fact
9 witness depositions; exchanges of the experts' initial, responsive, and rebuttal reports; and expert
10 depositions.

11 Defendants Jinkins and Billig:

12 As stated above in the Timing of Discovery section, Defendants Jinkins and Billig request
13 expedited disclosure of documents and information relied upon by Plaintiffs' experts for any
14 declarations or opinions relating to Washington State legislative and congressional redistricting.

15 (iii) Promotion of Expeditious and Inexpensive Resolution:

16 To the extent feasible, the parties agree to exchange documents informally. All Defendants
17 welcome presentation of discovery disputes to the Court by informal means. Informal exchange of
18 documents does not supplant any party's duty to properly produce all relevant documents in the
19 regular course of discovery.

20 **8. Agreements or issues related to the preservation of discoverable information
21 and the scope of the preservation obligation.**

22 Defendant Hobbs:

23 Defendant Hobbs notes that, at this time, he is not yet the official custodian of records of
24 the Redistricting Commission. *See* RCW § 44.05.110(1). The preservation of these records is
25 currently the responsibility of the Redistricting Commission, which is not currently a party to this
26 litigation.

1 Defendant Hobbs further notes that there may be discoverable information in the custody
2 and control of County election officials. County election officials are independent of the Office of
3 the Secretary of State and are independently responsible for preservation of any potentially
4 discoverable information. County election officials are not currently parties to this litigation.

5 Plaintiffs:

6 Under RCW § 44.05.110(1), Defendant Hobbs “shall be the custodian of the official
7 record” of the Redistricting Commission “[o]nce the commission ceases to exist.” The
8 Commission held its last regular meeting on January 18, 2022, and is winding down its operation.
9 Plaintiffs note that to the extent Defendant Hobbs currently possesses any records relevant to
10 Plaintiffs’ claims, including records of the Commission’s proceedings, those documents must be
11 preserved.

12 **9. Whether the case will involve Electrically Stored Information (“ESI”), how
13 the parties intend to preserve and produce ESI, and whether the parties agree to adopt this
14 district’s Model Agreement Regarding Discovery of ESI.**

15 This case will involve ESI, including but not limited to expert analysis and data, map
16 shapefiles, and other materials in native format, and the parties will need to cooperate in arranging
17 the exchange of ESI. Third-party discovery of ESI may also be required. The parties agree to adopt
18 this district’s Model Agreement Regarding Discovery of ESI.

19 **10. Whether the case will involve unique or extensive claims of privilege or work
20 product protection.**

21 This case will not involve unique or extensive claims of privilege or work product
22 protection. Any party withholding a document responsive to a discovery request under a claim of
23 privilege or other protection from disclosure will produce a privilege log within the time frame
24 established for discovery responses.

25 **11. Procedures for handling the inadvertent disclosure of privileged information.**

26 The parties agree that upon becoming aware of any inadvertent disclosure of privileged
information, the party aware of the inadvertent disclosure shall notify the other parties
immediately. Any parties in possession of inadvertently disclosed material subject to a claim of

1 privilege will immediately destroy any copies of the material. This does not prevent any party from
2 disputing a claim of privilege over any disclosed or undisclosed materials.

3 **12. What changes, if any, should be made to the limitations on discovery.**

4 Plaintiffs:

5 Based on current information, Plaintiffs anticipate seeking to conduct no more than twenty-
6 five (25) depositions.

7 Defendants:

8 Based on current information, Defendants do not anticipate the need for more than ten (10)
9 depositions as set forth in FRCP 26(b) and 30.

10 **13. The date discovery can be completed.**

11 Plaintiffs:

12 Plaintiffs propose September 23, 2022 as the completed discovery deadline.

13 Defendants:

14 Defendants propose a discovery cutoff no earlier than six weeks following service of
15 rebuttal expert reports.

16 **14. Suggestions for the prompt and efficient resolution of the case, such as the
17 phasing of motions to resolve dispositive issues or the bifurcation of liability and damage
issues.**

18 Defendants Jinkins and Billig:

19 Defendants Jinkins and Billig maintain that the resolution of party joinder issues and their
20 motion to dismiss should be resolved as a preliminary matter before proceeding to any matter
21 touching the merits of Plaintiffs' case. The prompt determination of the parties to this case,
22 including whether existing parties are properly Defendants and the potential inclusion of those
23 representing, at minimum, both political parties in the State of Washington, is key to the just and
24 fair resolution of Plaintiffs' claims.
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1 Plaintiffs:

2 As stated above, Plaintiffs maintain that discovery and litigation of the merits can and
3 should proceed regardless of the outcome of Defendant Jenkins and Billig’s motion to dismiss or
4 the party joinder deadline.

5 **15. Whether the parties intend to participate in an alternative dispute resolution
6 process beyond the required settlement conference, such as mediation or the individualized
7 trial program set forth in LCR 39.2.**

8 The parties presently do not intend to participate in an alternative dispute resolution
9 process. Plaintiffs are open to discussing settlement with the Defendants.

10 **16. The month the case will be ready for trial.**

11 Plaintiffs:

12 Plaintiffs believe that this case will be ready for trial no later than December 8, 2022.

13 Defendants:

14 Defendants propose a trial date no earlier than sixty days after the close of discovery.

15 Defendant Hobbs:

16 In addition to the foregoing position on trial date, if the parties intend to call state or county
17 elections officials as witnesses, Defendant Hobbs additionally suggests a trial date after December
18 8, 2022. In the lead up to the November 2022 General Election, and also during the period between
19 the General Election and the December 8, 2022 certification, many state and county election staff
20 members may be unavailable due to election-related duties.

21 **17. Whether the case will be jury or non-jury.**

22 This is a non-jury case.

23 **18. The number of trial days required.**

24 The parties believe 5-7 trial days would be sufficient.

25 **19. List the dates on which each and every non-governmental corporate party
26 filed its disclosure statement pursuant to FRCP 7.1 and LCR 7.1.**

 Plaintiff Southcentral Coalition of People of Color for Redistricting filed its corporate
disclosure statement on January 31, 2022.

1 Dated this 10th day of March 2022.

2
3 Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that all counsel of record were served a copy of the foregoing this 10th day of March, 2022 via the Court’s CM/ECF system.

/s/ Ernest I. Herrera
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