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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 SUSAN SOTO PALMER, *et al.*,

8 Plaintiffs,

9 v.

10 STEVEN HOBBS, *et al.*,

11 Defendants,

12 and

13 JOSE TREVINO, *et al.*,

14 Intervenor-Defendants.
15

Cause No. C22-5035RSL

ORDER DENYING
REQUEST FOR LEAVE TO
AMEND AND CONTINUING
TRIAL DATE

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17 This matter comes before the Court on the Intervenor-Defendants’ request to amend their
18 answer to add a crossclaim for declaratory and injunctive relief (Dkt. # 103 at 2 n.1)¹ and
19 “Plaintiffs’ Motion to Bifurcate and Transfer, Strike, and/or Dismiss Intervenor’s Crossclaim”
20 (Dkt. # 105). The proposed amendment challenges the constitutionality of Legislative District 15
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23 ¹ Federal Rule of Civil Procedure 15(a) establishes the procedure for amending pleadings before
23 trial. The fact that the Court established a deadline for amending pleadings in the case management
25 order does not alter that procedure. Because Intervenor-Defendants are seeking to amend their answer
26 more than 21 days after the original pleading was served, they may do so “only with the opposing
27 party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). There is no indication that
plaintiffs consented to the amendment. The Court therefore construes the amended pleading as a request
for leave to amend.

1 and requests the appointment of a 3-judge panel to hear the crossclaim. When the Intervenor-
2 Defendants sought leave to intervene on March 29, 2022, they argued that intervention was
3 necessary “because the current posture of the case lacks a true ‘adversarial presentation of the
4 issues’” and each of the three intervenors had a stake in the boundaries as drawn by the
5 Commission. Dkt. # 57 at 2-3. Their avowed purpose was to defend the existing boundaries and
6 make sure that any changes that came out of this litigation did not violate their equal protection
7 rights. They specifically declined to seek a modification of the case management deadlines.
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10 Seven months later, Intervenor-Defendants filed an amended answer adding a crossclaim
11 which, at its heart, is based on the proposition that the existing map is an unconstitutional racial
12 gerrymander that cannot be justified under Section 2 of the Voting Rights Act because there was
13 no legally significant racially polarized voting at the time the new district boundaries were
14 drawn. The claim is essentially the same one presented in *Garcia v. Hobbs*, C22-5152RSL,
15 which was filed on March 15, 2022, by attorney Andrew Stokesbary. Mr. Stokesbary also
16 represents the Intervenor-Defendants in this case.
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20 Intervenor-Defendants did not file a motion for leave to amend, nor have they addressed
21 Fed. R. Civ. P. 15 or its application in any subsequent filing. At oral argument, Intervenor-
22 Defendants merely pointed out that amendment under Rule 15(a)(2) should be freely granted
23 when justice so requires and that the State believes that trying the Section 2 and constitutional
24 claims together will be more efficient and avoid the risk of conflicting judgments.
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1 There is a “strong policy in favor of allowing amendment” under Rule 15 (*Kaplan v.*
2 *Rose*, 49 F.3d 1363, 1370 (9th Cir. 1994)), and “[c]ourts may decline to grant leave to amend
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4 only if there is strong evidence of undue delay, bad faith or dilatory motive on the part of the
5 movant, repeated failure to cure deficiencies by amendments previously allowed, undue
6 prejudice to the opposing party by virtue of allowance of the amendment, or futility of
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8 amendment, etc.” (*Sonoma County Ass’n of Retired Employees v. Sonoma Cnty.*, 708 F.3d 1109,
9 1117 (9th Cir. 2013) (internal quotation marks and alterations omitted)). The underlying purpose
10 of Rule 15 is “to facilitate decision on the merits, rather than on the pleadings or technicalities.”
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12 *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). Having reviewed the papers submitted by
13 the parties and the remainder of the record, the Court finds that there is strong evidence of undue
14 delay and prejudice to non-moving parties in this case.

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16 With regards to delay, Intervenor-Defendants have known of the alleged basis for their
17 crossclaim since before they filed their motion to intervene. The only explanation offered for
18 their delay in asserting the crossclaim is that discovery has confirmed that race was illegally
19 emphasized during the redistricting process. But the discovery of additional evidence supporting
20 a claim about which Intervenor-Defendants already knew in no way justifies a seven-month
21 delay in asserting the claim. An unjustified delay is ‘undue’ for the purposes of the Rule 15
22 analysis. *W. Shoshone Nat’l Council v. Molini*, 951 F.2d 200, 204 (9th Cir. 2000).

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25 With regards to prejudice, this case involves a Section 2 Voting Rights Act claim which
26 may impact the boundaries of a legislative district and, thus, must be decided well ahead of the
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1 next election cycle if plaintiffs are to obtain timely relief. *See Republican Nat'l Comm. V.*
2 *Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020).² Secretary of State Hobbs requests that
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4 there be no alteration to the current case management deadlines so that there is adequate time for
5 a decision in this case, any appropriate appellate review, the revision of the legislative maps,
6 adoption of the new maps, dissemination of the maps to local election officials, and
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8 implementation. Dkt. # 112. But the proposed amendment will almost assuredly require changes
9 to the case management schedule. The nature of this case required an aggressive discovery
10 schedule to ensure its timely resolution: discovery in this matter closed (with limited exceptions)
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12 on January 1, 2023. Motions practice and appeals related to standing and jurisdictional issues
13 arising from the addition of a crossclaim subject to 28 U.S.C. § 2284 will likely occupy many
14 weeks, if not months, of the time remaining before trial. Finally, even if the first two issues
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16 could be resolved or avoided, it is highly unlikely that a newly-appointed three-judge district
17 court will be able to keep the current trial date of May 1, 2023.³ Because introduction of
18 Intervenor-Defendants' proposed crossclaim at this late date will introduce complicating factors
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20 and issues that will undoubtedly impact the case management schedule and would likely prevent
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23 ² Plaintiffs filed the above-captioned matter on January 19, 2022, after the Washington State
23 Redistricting Commission had completed its redistricting tasks but before the legislature approved the
25 amendments to the plan under RCW 44.05.100(2). Despite what might have been considered a
26 “premature” or “early” lawsuit, their request for preliminary injunctive relief was denied because, by the
time the matter was fully briefed, the date by which a revised districting plan needed to be in the hands
of local election officials for the 2022 election cycle had already passed.

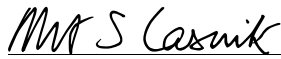
27 ³ The three-judge district court assigned to hear *Garcia* is not available on that date.

1 the resolution of plaintiffs' claims in time for the 2024 election cycle, the Court finds that the
2 requested amendment would cause prejudice to the non-moving parties.

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4 Finally, denying leave to amend under Rule 15 will not thwart a decision on the merits of
5 the proposed equal protection claim. As mentioned above, that claim is already being pursued in
6 *Garcia*, and a three-judge district court is scheduled to hear that case in June 2023.

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9 For all of the foregoing reasons, Intervenor-Defendants' request for leave to amend their
10 answer to add a crossclaim in the above-captioned matter (Dkt. # 103 at 2 n.1) is DENIED, and
11 plaintiff's motion to bifurcate, transfer, strike, or dismiss the crossclaim (Dkt. # 105) is
12 DENIED as moot. The Court finds, however, that judicial efficiency will best be served by
13 hearing the Section 2 and the equal protection claims together on June 5, 2023, the date on
14 which *Garcia* is currently scheduled for trial before a three-judge district court. A revised case
15 management order will be issued in *Palmer*. At the close of evidence at the consolidated trial,
16 the undersigned will issue a decision on the Section 2 claim, and the three-judge district court
17 will then consider the constitutional claim. Judgments in the two matters will be issued on the
18 same day so that the appeals, if any, can proceed together.
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23 Dated this 20th day of January, 2023.

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26 Robert S. Lasnik
27 United States District Judge

28 ORDER DENYING REQUEST
FOR LEAVE TO AMEND AND
CONTINUING TRIAL - 5