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

SUSAN SOTO PALMER, et al.,

Plaintiffs,

v.

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

Defendants.

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

PLAINTIFFS’ REPLY IN
OPPOSITION TO PROPOSED
INTERVENOR-DEFENDANTS’
PROPOSED RESPONSE IN
OPPOSITION TO PLAINTIFFS’
MOTION FOR PRELIMINARY
INJUNCTION

The Honorable Robert S. Lasnik

NOTE ON MOTION CALENDAR:
March 25, 2022

Plaintiffs respectfully submit this response in opposition to the Proposed Response in Opposition to Plaintiffs’ Motion for Preliminary Injunction filed by Jose Trevino, Ismael G. Campos, and State Representative Alex Ybarra (“Movants”), Dkt. # 61. As Plaintiffs will argue in their opposition to Movants’ motion to intervene, which is due and will be filed on April 11, 2022, Movants have not shown that they are entitled to intervene as of right or permissively. However, *even if* they are permitted to intervene, this Court should not consider Movants’ Proposed Response because it is severely untimely and its consideration would cause undue prejudice to Plaintiffs.

BACKGROUND

A. Plaintiffs’ Complaint and Motion for Preliminary Injunction

On January 19, 2022, Plaintiffs filed their complaint against Defendants Secretary of State Steven Hobbs, House Speaker Laurie Jenkins, and Senate Majority Leader Andrew Billig challenging the legislative redistricting plan drawn by the Washington Redistricting Commission (“Commission”) and approved by the Washington Legislature (“Enacted Plan”). *See* Compl.

1 Plaintiffs’ complaint alleges that Legislative District 15 (“LD 15”) was drawn to create the façade
2 of a Latino opportunity district but in fact dilutes Latino voting power in violation of Section 2 of
3 the federal Voting Rights Act (VRA). *Id.* To remedy this violation, Plaintiffs seek a declaration
4 that LD 15 in the Enacted Plan violates Section 2, an injunction enjoining the state from conducting
5 elections under that plan, and an order for a valid plan that does not violate Section 2. *Id.*, Prayer
6 for Relief.

7 Plaintiffs filed their motion for preliminary injunction on February 25, noting the motion
8 for March 25. Dkt. # 38. Defendants Jinkins and Billig, and Defendant Hobbs filed their respective
9 Responses to Plaintiffs’ Motion on March 21. Dkt. # 49; Dkt. # 50. Plaintiffs filed their Reply on
10 March 25. Dkt. # 54. Plaintiffs’ preliminary injunction motion was therefore fully briefed as of the
11 March 25 noting date *two weeks ago*. Shortly thereafter, oral argument on the motion was
12 scheduled by this Court for April 12. Dkt. # 58.

13 **B. *Garcia v. Hobbs* and Proposed Intervention Timeline**

14 On March 15, Rep. Drew Stokesbary, counsel for Movants here, filed a lawsuit on behalf
15 of Benancio Garcia III, an alleged current resident of the enacted LD, against Secretary Hobbs
16 challenging the Enacted Plan’s LD 15 as a racial gerrymander in violation of the Equal Protection
17 Clause. *See Garcia v. Hobbs*, No. 3:22-cv-5152, Dkt. # 1 ¶¶ 72-75. In the complaint that Rep.
18 Stokesbary signed, Mr. Garcia asks that the Court “[i]ssue a permanent injunction enjoining
19 Defendant [Secretary Hobbs] from enforcing or giving any effect to the boundaries of Legislative
20 District 15.” *See id.* at ¶ 77(c). Two weeks later, on March 29, Rep. Stokesbary filed a motion to
21 intervene in the instant matter on behalf of Jose Trevino, Ismael G. Campos, and Rep. Alex Ybarra.
22 Dkt. # 57. Unlike Rep. Stokesbary’s client in *Garcia*, who is challenging LD 15 as an
23 unconstitutional racial gerrymander, here his clients apparently seek to defend it as lawful. *Id.* at
24 1; *see also* Int.-Defs.’ Proposed Answer, Dkt. # 57-1.

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ARGUMENT

I. Movants’ Proposed Response Should Not Be Considered Because They Should Not Be Permitted to Intervene.

As will be discussed in Plaintiffs’ Response in Opposition to Movants’ Motion to Intervene due on Apr. 11, 2022, Movants fail to establish all of the elements required for intervention as of right under Rule 24(a) or for permissive intervention under Rule 24(b). Because they should not be allowed to intervene in this matter, Movants’ Response to Plaintiffs’ Motion for Preliminary Injunction should be disregarded by this Court.

II. Even If Movants Are Permitted to Intervene, their Response Should Not Be Considered Because It Is Untimely and Would Cause Undue Prejudice to Plaintiffs.

Movants’ Proposed Response to Plaintiffs’ Motion for Preliminary Injunction is untimely and permitting its consideration would unduly prejudice Plaintiffs.

First, Movants’ Response to Plaintiffs’ Motion is severely untimely. Plaintiffs filed their Motion for Preliminary Injunction on February 25 and, in keeping with Local Rule 7(d)(3) noted that motion for consideration on March 25, the fourth Friday after filing and service of the motion. Per LCR 7(d)(3), “[a]ny opposition papers shall be filed and served not later than the Monday before the noting date.” The deadline for filing opposition papers to Plaintiffs’ Motion for Preliminary Injunction was therefore over *two weeks ago* on March 21, a week before Movants even intervened in this case. Defendants Jinkins, Billig, and Hobbs complied with this deadline, and Plaintiffs replied to those responses on the March 25 deadline for such a reply. LCR 7(d)(3) (“Any reply papers shall be filed and served no later than the noting date.”).

In contrast, Movants’ Proposed Response was filed far after the deadline, despite indicating to this Court that they (through their attorney) were aware of the preliminary injunction briefing schedule and in fact *intervened because of it*. Dkt. # 57 at 2. Further, the Defendants’ positions in this case have been clear since at least February. *See* Dkt. # 37 (Defendants Jinkins’ and Billig’s motion to dismiss filed February 23, 2022); Dkt. # 40 (Defendant Hobbs’ statement of no position

1 filed February 25, 2022). Despite this notice well prior to the deadline, Movants delayed filing
2 their Response to Plaintiffs' Motion until April 8, 2022, 18 days after the deadline and just *four*
3 *days* prior to the scheduled oral argument on Plaintiffs' motion. This dilatory conduct violates
4 Local Rule 7, and for this reason alone, the Court ought to disregard Movants' Proposed Response.

5 *Second*, Plaintiffs would be unduly prejudiced by this Court's consideration of the
6 Movants' Proposed Response. As mentioned above, the Local Rules set out the deadlines for
7 briefing, in order to establish an orderly and fair process. It is obvious that waiting to file a response
8 until after Plaintiffs filed their reply gave the Movants an unfair advantage not accorded to the
9 other Defendants or contemplated under the Local Rules. Further, Movants' dilatory conduct
10 deprived Plaintiffs of the ability to even respond to Movants' arguments. Even putting aside
11 Plaintiffs' inability to respond per LCR 7(d)(3), the untimeliness of Movants' filing does not leave
12 Plaintiffs any meaningful opportunity to consider and respond to Movants' Response in the single
13 business day left prior to the oral argument on their Motion. Forcing Plaintiffs' counsel to spend
14 the time leading up to oral argument preparing a reply to Movants' untimely Response would
15 prejudice Plaintiffs given the impending deadlines in this case, including oral argument on April
16 12 and a brief in opposition to Movants' motion to intervene due the day April 11. And delaying
17 the oral argument would further intensify the threat of irreparable harm that Plaintiffs have
18 demonstrated will come to pass without rapid preliminary review and relief. *See* Dkt. #38 at 20-
19 21; Dkt. # 54 at 6.¹ Accordingly, the Court ought to disregard Movants' Proposed Response to
20 prevent undue prejudice to the Plaintiffs arising from Movants' delay.

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¹ Should the Court have any substantive questions arising from the Proposed Response, Plaintiffs'
24 counsel can respond to those inquiries at the April 12 oral argument on Plaintiffs' motion.
25 Avoiding undue prejudice, however, would require that this Court wholly disregard those
26 arguments due to the lack of adequate time to consider them, and the fact that as of the date of oral
argument, Movants' motion to intervene will not have been fully briefed, let alone considered by
this Court.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court disregard Movants’ Proposed Response in Opposition to Plaintiffs’ Motion for Preliminary Injunction.

Dated: April 8, 2022

By: /s/ Simone Leeper

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CERTIFICATE OF SERVICE

I certify that all counsel of record were served a copy of the foregoing this 8th day of April, 2022 via the Court’s CM/ECF system.

/s/ Simone Leeper

Counsel for Plaintiffs

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