

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, and  
the STATE OF WASHINGTON,

Defendants.

NO. 3:22-cv-5152-RSL-DGE-LCJV

STIPULATED MOTION TO  
MODIFY SCHEDULING ORDER  
AND EXTEND TRIAL DATE  
AND RELATED DATES

NOTE FOR MOTION CALENDAR:  
August 22, 2022

**I. INTRODUCTION**

The parties jointly move for a modest adjustment to the case scheduling order to align this case’s schedule with the related case of *Soto Palmer v. Hobbs*, 3:22-cv-05035-RSL. Last week, the Court in *Soto Palmer* entered a new scheduling order extending the trial date from January 9, 2023, to May 1, 2023, and resetting all interim deadlines accordingly. *See* Exhibit 1. This extension was necessary because the State was brought into that case four months later than the other parties, putting it at a significant disadvantage relative to other parties and with insufficient time to meet critical deadlines.

Both this case and *Soto Palmer* challenge the State’s recent legislative redistricting and are essentially mirror images of each other: *Soto Palmer* alleges the State violated Section 2 of

1 the Voting Rights Act (VRA) because new Legislative District (LD) 15 fails to give Latino voters  
 2 the opportunity to elect the candidates of their choice, while this case alleges the State violated  
 3 the Equal Protection Clause by taking race into account in creating Legislative District 15, when  
 4 doing so was not necessary to comply with Section 2 of the VRA. Because both cases turn on  
 5 related legal questions and much of the same evidence, efficiency and equity dictate the cases  
 6 should be heard on a parallel schedule.

7 The parties, therefore, request this Court grant their stipulated motion and enter a new  
 8 case scheduling order extending all dates by four months.

## 9 II. BACKGROUND

10 Plaintiff filed their suit on March 15, 2022, naming Secretary of State Steven Hobbs as  
 11 the sole defendant. Dkt. # 1. Plaintiff filed his Amended Complaint on June 9, and the State,  
 12 after waiving service, filed its Answer on August 8, 2022. Dkt. # 24.

13 In July, the parties reached an agreement to file this motion, seeking an extension of the  
 14 case schedule resetting all deadlines to be on or around 30 days after the same deadlines in  
 15 *Soto Palmer*.

## 16 III. ARGUMENT

### 17 A. Legal Standard

18 A court may modify a scheduling order “only for good cause,” Fed. R. Civ. P. 16(b)(4),  
 19 and the “decision regarding a continuance is given great deference.” *Danjaq LLC v. Sony Corp.*,  
 20 263 F.3d 942, 961 (9th Cir. 2001). The analysis is guided by four factors: “(1) the movant’s  
 21 diligence in preparing for the date set for hearing; (2) the likelihood that a continuance will  
 22 address the need giving rise to the motion for a continuance; (3) the extent to which a continuance  
 23 will inconvenience the court and the opposing party, including its witnesses; and (4) whether the  
 24 movant will suffer prejudice if the continuance is denied.” *Johnson v. Young*,  
 25 3:14-CV-00178RCJVPC, 2016 WL 923094, at \*1 (D. Nev. Mar. 10, 2016) (citing  
 26

1 *United States v. Flynt*, 756 F.2d 1352, 1359 (9th Cir. 1985)); *see also Janis v. Ashcroft*,  
 2 94 F. App'x 564, 566 (9th Cir. 2004).

3 All parties agree that good cause exists to extend the case schedule, both to put this case  
 4 on a parallel track with *Soto Palmer* and to ensure the State has adequate time to engage in  
 5 discovery, including expert discovery, and is on equal footing with the other parties in this case.

6 **B. There Is Good Cause to Put this Case on a Parallel Track with *Soto Palmer***

7 *Soto Palmer* and *Garcia* are essentially two sides of the same coin: both challenge the  
 8 State's redistricting plan, one as failing to ensure there were enough Hispanic voters in LD 15,  
 9 in violation of the Voting Rights Act, the other as improperly taking Hispanic voters' race into  
 10 account, in violation of the Equal Protection Clause. Allowing the parties to litigate the cases in  
 11 tandem is more efficient and sensible than requiring them to litigate these cases separately.

12 In light of the overlap in fact and, to a certain extent, law, putting the cases on parallel  
 13 tracks will save time, cost, and effort for all parties and the Court. Counsel in this case are also  
 14 involved in *Soto Palmer*—the State and Secretary Hobbs are each represented by the same  
 15 counsel in both cases, and Plaintiff Garcia is represented by some of the same counsel as the  
 16 *Soto Palmer* Intervenor-Defendants. Accordingly, the parties have already been litigating these  
 17 two cases in parallel. Adjusting the schedule in this case to allow parallel litigation to continue  
 18 will permit the parties to continue consolidating their efforts between the two cases.

19 In short, in light of this interconnection between *Soto Palmer* and *Garcia*, it is far more  
 20 efficient for the cases to be litigated in parallel.

21 **C. The State's Late Entry Is Good Cause for Modifying the Case Schedule**

22 Modifying the case schedule is warranted because the State needs a chance to catch up  
 23 to the three-month head start every other party in this case enjoyed. Under the current case  
 24 schedule, the State had only two months from the time it was made a party until expert reports  
 25 were due and has only four months to complete all discovery, and only five months to complete  
 26 dispositive motions. *See* Dkt. # 10 (Minute Order Setting Trial Date and Related Dates). This

1 unfairness plainly justifies a continuance. *See, e.g., AT&T Commc'ns--E., Inc. v. Cent. Puget*  
 2 *Sound Reg'l Transit Auth.*, C07-5186BHS, 2008 WL 2790228, at \*7 (W.D. Wash. July 14, 2008)  
 3 (“Given BNSF's relatively recent entry into this case, the Court agrees that a continuance of the  
 4 trial date and certain pretrial deadlines is appropriate.”)<sup>1</sup>; *United States v. Kloehn*, 620 F.3d 1122,  
 5 1127 (9th Cir. 2010) (“The September continuance was requested by Kloehn and granted by the  
 6 court primarily on the ground that the government had made substantial changes to the trial  
 7 indictment, as a result of which the defense needed extra time to prepare for trial.”); *see also*  
 8 *Elvir v. Trinity Marine Prods., Inc.*, 327 F.R.D. 532, 547 (M.D. La. 2018), *aff'd*,  
 9 CV 16-814-SDD-EWD, 2018 WL 4628320 (M.D. La. Sept. 27, 2018) (permitting an  
 10 amendment to add parties because “the availability of a continuance . . . cures virtually all  
 11 potential prejudice”).

12 Moreover, a review of the four *Flynt* factors confirms that a continuance is appropriate  
 13 in light of the State’s late entry into the case.

14 **1. The parties have been diligent**

15 The first *Flynt* factor, the movant’s diligence, supports a continuance. The State received  
 16 the Amended Complaint on June 9, 2022. Shortly thereafter, the parties began discussing a  
 17 possible continuance, ultimately agreeing on this motion.

18 In the meantime, the parties have been diligently moving the *Soto Palmer* case forward.  
 19 Plaintiff and the State have retained experts, whose work is well underway. The parties have  
 20 responded to discovery requests, produced responsive documents, and begun depositions of key  
 21 witnesses.

22 Despite this diligence, the current case schedule simply does not give the parties  
 23 sufficient time to meet critical deadlines. Moreover, Plaintiff’s three-month delay in joining the  
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25 <sup>1</sup> In *AT&T*, the movant sought a six-month continuance, but the Court granted only a three-month  
 26 continuance because the defendant had shown that a lengthier continuance would cause significant prejudice by  
 “interfere[ing] with construction of the Sounder commuter rail system.” *AT & T Commc'ns*, 2008 WL 2790228, at  
 \*7. But here, all parties agree a four-month continuance is appropriate and will not cause prejudice.

1 State has placed the state at a disadvantage in its case preparation. On these facts, there is no  
2 dispute that the parties have been diligent.

3 **2. A continuance will give the parties time to adequately prepare their cases**

4 The second *Flynt* factor, “the likelihood that a continuance will address the need giving  
5 rise to the motion for a continuance,” sharply favors the parties’ request. Under the current case  
6 schedule, it is extremely difficult for Plaintiff to meet critical deadlines and effectively  
7 impossible for the State to do so. Most pressingly, researching and retaining experts, and having  
8 those experts conduct analyses and prepare credible, quality expert reports takes months. The  
9 limited remaining time in the discovery period also largely forecloses the parties from taking  
10 iterative discovery. So rather than obtaining initial discovery, having an opportunity to review  
11 it, and then being able to take follow-up discovery based on what it learns, the current case  
12 schedule essentially gives the parties one or at best two rounds of discovery, with limited  
13 opportunity for follow-up. A continuance, however, will give the parties the time they need to  
14 take discovery, engage experts, and prepare this case for trial.

15 **3. A modest continuance, sought well in advance of the scheduled trial date,  
16 will cause little if any inconvenience**

17 The third *Flynt* factor, “the extent to which a continuance will inconvenience the court  
18 and the opposing party, including its witnesses,” also supports a continuance. All parties agree  
19 they will not experience any meaningful prejudice from a modest continuance. And with the  
20 scheduled trial date still months out, neither the parties nor the Court have (presumably) made  
21 travel plans or other binding commitments that would be upset if the trial date were moved. And  
22 to the extent anyone has, the parties are more than willing to be flexible about specific dates.

23 **4. The parties will be prejudiced without a continuance**

24 “[T]he focus of [the] prejudice inquiry is the ‘extent to which the aggrieved party’s right  
25 to present his defense has been affected.’” *Kloehn*, 620 F.3d at 1128 (quoting *United States v.*  
26 *Mejia*, 69 F.3d 309, 318 n.11 (9th Cir. 1995)). Here, for all the reasons explained in detail above,

1 the parties will be prejudiced—and the State severely so—if they are not given adequate time to  
2 prepare their case. *See Johnson*, 2016 WL 923094, at \*2 (granting a continuance where the  
3 current case schedule caused a party “to suffer prejudice because of inadequate time to prepare”).  
4 To ameliorate this prejudice, a continuance is appropriate.

5 **IV. CONCLUSION**

6 The Parties respectfully requests that this Court grant their stipulated motion and enter a new  
7 scheduling order extending all case dates to approximately one month after the corresponding  
8 dates in *Soto Palmer* as reflected in the parties’ proposed order.

9 DATED this 22nd day of August, 2022.

10 ROBERT W. FERGUSON  
11 Attorney General

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**ORDER**

SO ORDERED.

DATED this \_\_\_ day of \_\_\_\_\_ 2022.

s/  
\_\_\_\_\_  
THE HONORABLE ROBERT S. LASNIK

s/  
\_\_\_\_\_  
THE HONORABLE DAVID. G. ESTUDILLO

s/  
\_\_\_\_\_  
THE HONORABLE LAWRENCE VAN DYKE

**DECLARATION OF SERVICE**

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court’s CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 22nd day of August 2022, at Seattle, Washington.

s/ Andrew R.W. Hughes  
ANDREW R.W. HUGHES, WSBA No. 49515  
Assistant Attorney General

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# Exhibit 1



1 All motions in limine must be filed by and noted on the motion April 3, 2023  
calendar no earlier than the second Friday thereafter.  
2 Replies will be accepted.

3 Agreed pretrial order due April 19, 2023

4 Pretrial conference to be scheduled by the Court

5 Trial briefs and trial exhibits due April 26, 2023

6 Length of Trial: 5-7 days Non Jury

7 These dates are set at the direction of the Court after reviewing the parties' submission.

8 Dkt. # 79. All other dates have already passed or are specified in the Local Civil Rules. If any  
9 of the dates identified in this Order or the Local Civil Rules fall on a weekend or federal holiday,  
10 the act or event shall be performed on the next business day. These are firm dates that can be  
11 changed only by order of the Court, not by agreement of counsel or the parties. The Court will  
12 alter these dates only upon good cause shown; failure to complete discovery within the time  
13 allowed is not recognized as good cause.

14 If the trial date assigned to this matter creates an irreconcilable conflict, counsel must  
15 notify Teri Roberts, the judicial assistant, at 206-370-8810 within 10 days of the date of this  
16 Order and must set forth the exact nature of the conflict. A failure to do so will be deemed a  
17 waiver. Counsel must be prepared to begin trial on the date scheduled, but it should be  
18 understood that the trial may have to await the completion of other cases.

19 The settlement conference conducted between the close of discovery and the filing of  
20 dispositive motions requires a face-to-face meeting or a telephone conference between persons  
21 with authority to settle the case. The settlement conference does not have to involve a third-  
22 party neutral.

23 ///

1 ALTERATIONS TO ELECTRONIC FILING PROCEDURES AND LOCAL RULES

2 Information and procedures for electronic filing can be found on the Western District of  
3 Washington's website at [www.wawd.uscourts.gov](http://www.wawd.uscourts.gov). *Pro se* litigants may file either  
4 electronically or in paper form. The following alterations to the Electronic Filing Procedures  
5 apply in all cases pending before Judge Lasnik:

6 – Alteration to LCR 10(e)(9) - Effective July 1, 2014, the Western District of  
7 Washington will no longer accept courtesy copies in 3-ring binders. All courtesy copies must be  
8 3-hole punched, tabbed, and bound by rubber bands or clips. If any courtesy copies are delivered  
9 to the intake desk or chambers in 3-ring binders, the binders will be returned immediately. This  
10 policy does **NOT** apply to the submission of trial exhibits.

11 – Alteration to Section III, Paragraph M of the Electronic Filing Procedures - Unless the  
12 proposed order is stipulated, agreed, or otherwise uncontested, the parties need not e-mail a copy  
13 of the order to the judge's e-mail address.

14 – Pursuant to LCR 10(e)(10), all references in the parties' filings to exhibits should be as  
15 specific as possible (*i.e.*, the reference should cite the specific page numbers, paragraphs, line  
16 numbers, etc.). All exhibits must be marked to designate testimony or evidence referred to in the  
17 parties' filings. Filings that do not comply with LCR 10(e) may be rejected and/or returned to  
18 the filing party, particularly if a party submits lengthy deposition testimony without highlighting  
19 or other required markings.

20 – Alteration to LCR 7(d)(4) - Any motion *in limine* must be filed by the date set forth  
21 above and noted on the motion calendar no earlier than the second Friday thereafter. Any  
22 response is due on or before the Wednesday before the noting date. Parties may file and serve  
23 reply memoranda, not to exceed nine pages in length, on or before the noting date.

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PRIVACY POLICY

Pursuant to Federal Rule of Civil Procedure 5.2 and LCR 5.2, parties must redact the following information from documents and exhibits before they are filed with the court:

- \* Dates of Birth - redact to the year of birth
- \* Names of Minor Children - redact to the initials
- \* Social Security Numbers and Taxpayer Identification Numbers - redact in their entirety
- \* Financial Accounting Information - redact to the last four digits
- \* Passport Numbers and Driver License Numbers - redact in their entirety

All documents filed in the above-captioned matter must comply with Federal Rule of Civil Procedure 5.2 and LCR 5.2.

COOPERATION

As required by LCR 37(a), all discovery matters are to be resolved by agreement if possible. Counsel are further directed to cooperate in preparing the final pretrial order in the format required by LCR 16.1, except as ordered below.

TRIAL EXHIBITS

The original and one copy of the trial exhibits are to be delivered to chambers five days before the trial date. Each exhibit shall be clearly marked. Exhibit tags are available in the Clerk's Office. The Court hereby alters the LCR 16.1 procedure for numbering exhibits: plaintiff's exhibits shall be numbered consecutively beginning with 1; defendant's exhibits shall be numbered consecutively beginning with 500. Duplicate documents shall not be listed twice: once a party has identified an exhibit in the pretrial order, any party may use it. Each set of exhibits shall be submitted in a three-ring binder with appropriately numbered tabs.

1 SETTLEMENT

2 Should this case settle, counsel shall notify the Deputy Clerk, Victoria Ericksen at 206-  
3 370-8517, as soon as possible. Pursuant to LCR 11(b), an attorney who fails to give the Deputy  
4 Clerk prompt notice of settlement may be subject to such discipline as the Court deems  
5 appropriate.

6 DATED this 15th day of August, 2022.

7  
8 /s Victoria Ericksen  
9 Victoria Ericksen, Deputy Clerk to  
Hon. Robert S. Lasnik  
victoria\_ericksen@wawd.uscourts.gov

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, and  
the STATE OF WASHINGTON,  
  
Defendants.

NO. 3:22-cv-5152-RSL-DGE-LCJV

[PROPOSED] ORDER GRANTING  
STIPULATED MOTION TO  
MODIFY SCHEDULING ORDER  
AND EXTEND TRIAL DATE AND  
RELATED DATES  
[PROPOSED]

NOTED: August 22, 2022

**[PROPOSED] ORDER**

This matter came before the Court on the Parties' Stipulated Motion to Modify Scheduling Order and Extend Trial Date and Related Dates. The Court has reviewed the Stipulated Motion and any supporting papers filed therewith.

Based on the foregoing, and for good cause shown, it is hereby ORDERED that the Stipulated Motion is **GRANTED**.

It is further ORDERED that the following deadlines shall apply to this case:

EVENT	DATE
Trial Date	Court's first availability on or after June 5, 2023

1	Deadline for amended pleadings	December 4, 2022
2	Report from expert witnesses under FRCP 26(a)(2) due	December 4, 2022
3	Discovery completed by	February 1, 2023
4	All motions related to discovery must be noted on the motion calendar no later than the Friday before discovery closes pursuant to LCR 7(d) or LCR 37(a)(2)	
7	Settlement conference held no later than	February 15, 2023
8	All dispositive motions must be filed by and noted on the motion calendar no later than the fourth Friday thereafter (see LCR 7(d)(3))	March 3, 2023
10	All motions in limine must be filed by and noted on the motion calendar no earlier than the second Friday thereafter. Replies will be accepted	May 1, 2023
12	Agreed pretrial order due	May 17, 2023
13	Pretrial conference to be scheduled by the Court	
14	Trial briefs and trial exhibits due	May 26, 2023

15 IT IS SO ORDERED.

16 DATED this \_\_\_ day of \_\_\_\_\_ 2022.

18  
19 s/  
THE HONORABLE ROBERT S. LASNIK

21  
22 s/  
THE HONORABLE DAVID. G. ESTUDILLO

24  
25 s/  
THE HONORABLE LAWRENCE VAN DYKE

1 Presented by:

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3 Attorney General

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**DECLARATION OF SERVICE**

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court’s CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 22nd day of August 2022, at Seattle, Washington.

*s/ Andrew R.W. Hughes*  
\_\_\_\_\_  
ANDREW R.W. HUGHES, WSBA No. 49515  
Assistant Attorney General