

The Honorable Robert S. Lasnik

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

SUSAN SOTO PALMER, et. al.,  
*Plaintiffs,*  
v.  
STEVEN HOBBS, et. al.,  
*Defendants,*  
and  
JOSE TREVINO, ISMAEL CAMPOS,  
and ALEX YBARRA,  
*Intervenor-Defendants.*

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

Judge: Robert S. Lasnik

**PLAINTIFFS’ RESPONSE TO  
STATE OF WASHINGTON’S  
MOTION FOR INQUIRY  
CONCERNING POTENTIAL  
CONFLICTS OF INTEREST**

NOTE FOR MOTION  
CALENDAR: March 3, 2023

**INTRODUCTION**

The issues raised in the State’s motion merit serious inquiry. Like the State, Plaintiffs take no position on whether disqualification of counsel for Intervenor in this case and/or Mr. Benancio Garcia in the *Garcia* matter is required. These are questions for the Court to resolve. Plaintiffs instead write in response to raise two important points relevant to these requested inquiries.

First, the potential conflicts at issue among the clients of Mr. Stokesbary and attorneys at Holtzman Vogel are directly traceable to the efforts of Commissioner Paul Graves to conjure up nonmeritorious and conflicting legal claims to frustrate and delay this proceeding. Testimony from Mr. Garcia’s recent deposition and newly produced documents reveal that Commissioner Graves recruited not only counsel for the *Garcia* case but also Mr. Garcia himself to be the plaintiff in a

1 lawsuit challenging the constitutionality of a district that Commissioner Graves drew. The  
2 Commissioner’s stated goal in coordinating these efforts was to forestall relief in this case. Mr.  
3 Graves also testified he does not think the map is an unconstitutional racial gerrymander; yet he  
4 found it appropriate—as an attorney—to coordinate the filing of a federal lawsuit he believed to  
5 be meritless in order to interfere with a separate ongoing federal proceeding.

6 Second, given that the conflicts in question arise from an effort to disrupt Plaintiffs’ claim  
7 for relief, Plaintiffs respectfully request that neither the requested inquiries nor their outcomes  
8 result in any further delay or disruption to the case management schedule. As this Court and both  
9 Defendants have acknowledged, any further delay of trial risks denying Plaintiffs a fair shot at  
10 relief in the 2024 election.

11 If this Court concludes that Intervenors will need to find new counsel due to  
12 insurmountable conflicts of interest, the Court should neither offer nor entertain a stay of these  
13 proceedings. Intervenors were allowed only *permissive* intervention in this suit because they lack  
14 any significant protectable interest in the claims at issue. Since joining the suit as parties, they have  
15 made at least three attempts to delay trial, twice by unsuccessfully seeking a stay of proceedings  
16 and once by attempting to raise a counterclaim at the eleventh hour *challenging* the configuration  
17 of LD 15 they were also *defending*. Should Intervenors need to seek new counsel as a result of this  
18 inquiry, the Court should either permit Intervenors to secure counsel within the limits of the  
19 existing schedule or exercise its discretion to dismiss Intervenors from the lawsuit.

20 Likewise, if the Court finds that Mr. Garcia must seek new counsel in his case, the Court  
21 should resist any calls for delay of trial in this matter. Mr. Garcia’s racial gerrymandering claim  
22 depends on and could be rendered moot by the outcome of Plaintiffs’ VRA claims. Rather than  
23 delay trial in both cases, the most just and efficient course would be to put Mr. Garcia’s case in  
24 abeyance pending resolution of this case.

1 At bottom, Plaintiffs ask that the Court not allow the investigation and resolution of issues  
 2 raised in the State’s motion to achieve the very delay Commissioner Graves and counsel for  
 3 Intervenors/Mr. Garcia have sought throughout this litigation.

#### 4 ARGUMENT

##### 5 **I. Commissioner Graves recruited Mr. Stokesbary, Holtzman Vogel, and Mr.** 6 **Garcia to forestall Latino voters’ claims for relief under the VRA.**

7 The State’s inquiry motion recounts most—but not all—of the “[t]roubling testimony”  
 8 regarding the conflict of interest between Mr. Garcia and Intervenors, all of whom are represented  
 9 by Mr. Stokesbary and attorneys at Holtzman Vogel. One glaring omission from the State’s  
 10 account is new evidence shedding light on Commissioner Paul Graves’s role in the genesis of this  
 11 representation scheme. Mr. Garcia’s recent deposition testimony and newly produced documents  
 12 add to the growing body of evidence confirming that the filing of the *Garcia* case, the intervention  
 13 in this case, and the repeated efforts to delay trial are part of a coordinated effort with  
 14 Commissioner Graves to prevent compliance with Section 2 of the Voting Rights Act.

15 As Plaintiffs have previously shown, Commissioner Graves was working in early March  
 16 2022 to secure funding and counsel for legal claims challenging LD 15 (which he drew) as an  
 17 unconstitutional racial gerrymander, all to “light the fire” and “forestall” relief in this case. Dkt. #  
 18 127-3 (Graves Dep.) at 203:16-204:3, 205:8-13. To that end, Commissioner Graves spoke with  
 19 Mr. Stokesbary, Jason Torchinsky at Holtzman Vogel, and attorneys at Davis Wright Tremaine,  
 20 LLP<sup>1</sup> about “getting an intervenor or maybe a plaintiff of some kind” to forestall relief in this case.

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21  
 22 <sup>1</sup> Commissioner Graves, Commissioner Fain, and the Washington State Republican Party had  
 23 retained Davis Wright Tremaine during the redistricting process to “prepare a memorandum  
 24 concerning the Voting Rights Act’s application to proposed districts in and around Yakima, and  
 25 such similar work as the parties direct.” Dkt. # 113-2. This memorandum, though rife with legal  
 26 errors and devoid of any factual analysis, led Commissioner Graves to draw a bare Latino CVAP-  
 majority district in the Yakima area—a strategy he thought would insulate it from a Section 2  
 lawsuit. Dkt. # 113 at 3. It is unclear what role, if any, attorneys from Davis Wright Tremaine  
 continued to play in *Garcia* or the *Soto Palmer* intervention.

1 *Id.* at 200:22-201:7, 203:16-204:13, 204:17-22. In early March 2022, Commissioner Graves also  
2 worked to secure funding by, for example, connecting the Davis Wright Tremaine attorneys with  
3 Adam Kincaid at the National Republican Redistricting Trust to potentially “serve as a financing  
4 vehicle for this work.” Dkt. # 113-2 at 3. This email was forwarded to Mr. Stokesbary on March  
5 7, who then filed *Garcia* on March 15 and a motion to intervene in this case on March 27, 2022.  
6 *Id.* at 2.

7 Mr. Garcia’s deposition and recently produced documents now show that Commissioner  
8 Graves not only coordinated the funding, representation, and filing of the *Garcia* lawsuit **but also**  
9 **recruited Mr. Garcia as its sole plaintiff**. Text messages recently produced by Commissioner  
10 Graves and Mr. Garcia show that the two were introduced via group text by a mutual connection,  
11 Maia Espinoza, on March 1, 2022—at precisely the time when Commissioner Graves was lining  
12 up other preconditions for a legal claim. Ex. 1 (Palmer\_Graves\_000599). In making the  
13 introduction, Ms. Esponiza noted that she had informed Commissioner Graves of Mr. Garcia’s  
14 “interest in the Voting Rights lawsuit issue in Yakima.” *Id.* Commissioner Graves made plans to  
15 speak with Mr. Garcia that same day. *Id.*; *see also* Ex. 2 (Garcia Dep.) at 27:3-6, 28:24-29:2.

16 At his deposition, when asked about what was discussed that day, Mr. Garcia testified, “I  
17 could say we agreed that -- that the redistricting seemed to be racial gerrymandering.” Ex. 2 at  
18 27:7-9. Mr. Garcia went on to confirm twice his impression that he and Commissioner Graves  
19 agreed that LD 15 was an unconstitutional racial gerrymander. *Id.* at 28:8-21 and 52:23-53:3 (“Q.  
20 But [Commissioner Graves] had a conversation with you, and you took away from it that he was  
21 sympathetic to what you were expressing, that you thought there was a problem that District 15  
22 was a racial gerrymander; is that -- am I understanding that correctly? A. Yes.”).

23 On March 2, Commissioner Graves texted Mr. Garcia to let him know that his contact  
24 information had been sent to the attorneys at Davis Wright Tremaine. Ex. 3 at 1 (Garcia\_Graves  
25 Texts Chronological). When Mr. Garcia expressed worry about “mak[ing] a mistake with all [he  
26

1 had] going on,” Commissioner Graves responded, “Don’t worry—I won’t let you.” *Id.* at 2. The  
 2 next day, Commissioner Graves texted Mr. Garcia again, this time to see if he had yet spoken  
 3 “with people at the Republican National Hispanic assembly,” stating that “[i]t would be terrific if  
 4 it could serve as a plaintiff as well.” *Id.* at 3. On March 4, Commissioner Graves put Mr. Garcia  
 5 on an email chain with the attorneys from Davis Wright Tremaine who were “working on the  
 6 redistricting lawsuit,” noting that Mr. Garcia was “excited about being involved.” Ex. 4  
 7 (Palmer\_Graves\_000597).<sup>2</sup>

8 Substantial evidence therefore places Commissioner Graves at the center of a coordinated  
 9 effort—with Mr. Stokesbary and attorneys at Holzman Vogel, among others—to file  
 10 nonmeritorious and conflicting legal claims so as to frustrate Latino community members’ ability  
 11 to prosecute their VRA claims and secure an opportunity district in the Yakima Valley.

12 **II. Consideration and resolution of the State’s motion should not—and need not—**  
 13 **delay a trial on Plaintiffs’ VRA claims.**

14 Given that the matters raised by the State’s motion stem from concerted efforts to disrupt  
 15 this proceeding, neither these inquiries nor their outcomes should reward those efforts with a delay  
 16 of trial.

17 Delay would be extremely prejudicial to Plaintiffs and risk irreparable deprivation of their  
 18 right to an undiluted vote in the 2024 elections. *See League of Women Voters of N. Carolina v.*  
 19 *North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (“[O]nce the election occurs, there can be no  
 20 do-over and no redress. The injury to these voters is real and completely irreparable if nothing is  
 21

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22 <sup>2</sup> Plaintiffs note that Exs. 1 and 4 were not included in Commissioner Graves’s initial subpoena  
 23 productions. These documents were only produced after Plaintiffs alerted his counsel that such  
 24 communications with Mr. Garcia were very likely withheld. The Commissioner’s counsel was  
 25 “unsure why these [communications] were not produced as part of [his] last production other than  
 26 that they were excluded through an inadvertent mistake.” Ex. 5 (2-22-23 Email from Aaron  
 Millstein). As it stands, Commissioner Graves’s production remains incomplete because Mr.  
 Garcia has since produced even more text messages with Commissioner Graves that the  
 Commissioner has yet to produce. *See, e.g.*, Ex. 3.

1 done[.]”). This Court recognized as much in denying Intervenor’s repeated attempts to stay these  
2 proceedings, noting that “this case . . . must be decided well ahead of the next election cycle if  
3 plaintiffs are to obtain timely relief.” Dkt. # 136 at 3-4. Likewise, in dismissing Intervenor’s  
4 crossclaim, the Court reasoned that introducing “complicating factors” at this late stage “would  
5 likely prevent the resolution of plaintiffs’ claim in time for the 2024 election cycle [and] cause  
6 prejudice to the non-moving parties.” *Id.* at 4-5.

7 For similar reasons, the Court should not allow this episode caused by counsel representing  
8 non-essential parties (and a non-party) to disrupt the schedule here, which both Defendants and  
9 the Court have agreed is necessary to effectuate the fair administration of justice. *See id.*; Dkt. #  
10 130 (Defendant State of Washington opposing renewed stay motion and agreeing that delay of  
11 trial to June risks insufficient time to develop, approve, and implement a remedial plan before the  
12 2024 election); Dkt. # 112 (Defendant Hobbs requesting no alteration to case schedule to ensure  
13 adequate time for a decision, appellate review, and implementation of remedy).

14 Furthermore, no outcome of this investigation *requires* a delay of trial. Whether the  
15 inquiries lead this Court to disqualify counsel for Intervenor in this case and/or the plaintiff in  
16 *Garcia*, this Court should maintain the current case schedule.

17 If the Court concludes that counsel for Intervenor can no longer participate in this case  
18 due to a conflict with a current or former client, then the Court may, within its discretion, permit  
19 Intervenor to diligently seek new counsel conditioned on no further delay or disruption to the case  
20 schedule. *See FMC Corp. v. Vendo Co.*, 196 F. Supp. 2d 1023, 1030 (E.D. Cal. 2002) (“The  
21 decision to modify a scheduling order is within the broad discretion of the district court.”). Given  
22 that discovery is essentially concluded, the time that remains before trial is more than sufficient  
23 for new counsel to prepare.

24 Alternatively, the Court could—and should—use its inherent power to manage the  
25 proceeding by dismissing Intervenor from the lawsuit. *See Olivia v. Sullivan*, 958 F.2d 272, 273  
26

1 (9th Cir. 1992) (“District courts have inherent power to control their dockets and may impose  
2 sanctions, *including dismissal*, in the exercise of that discretion.”) (emphasis added). Intervenor  
3 were not granted party status as of right because this Court concluded that they “lack a significant  
4 protectable interest in the litigation” and fail to “identif[y] any direct or concrete injury that has  
5 befallen or is likely to befall them if plaintiffs’ Section 2 claim is successful.” Dkt. # 69 at 5, 10.  
6 In other words, Mssrs. Trevino, Campos, and Ybarra have no concrete stake in the outcome, and  
7 so their dismissal would do them no concrete harm.

8 Intervenor’s dismissal would not leave their general interest in defending this suit  
9 unrepresented. The Court’s grant of *permissive* intervention was premised on uncertainty at the  
10 time as to whether any state actor was going to defend the challenged district. *See id.* at 10 (noting  
11 “the absence of other truly adverse parties”). But the State has since been joined as a party, Dkt. #  
12 70, and has vigorously defended LD 15 against Plaintiffs’ claims. To the extent Intervenor  
13 maintain interests in preserving LD 15’s current boundaries, defeating Plaintiffs’ Section 2 claims,  
14 or ensuring a remedial district’s compliance with state and federal law, those interests are  
15 adequately represented by the State.

16 The Court also granted permissive intervention based on Intervenor’s representations that  
17 they “do [not] seek to change . . . the Court’s scheduling order” and “are not raising any new claims  
18 in any of their pleadings or motions filed today.” Dkt. # 57 at 11-12. These assurances have proven  
19 hollow. Intervenor has *twice* sought to stay the proceedings pending the Supreme Court’s  
20 decision in *Merrill v. Milligan*, which every party opposed and this Court denied. They also  
21 unsuccessfully sought to delay by filing a crossclaim alleging that LD 15 is an unconstitutional  
22 racial gerrymander—the same claim Intervenor’s counsel filed on behalf of a different plaintiff in  
23 *Garcia* and in direct contradiction with Intervenor’s stated desire to *defend* LD 15 and see the map  
24 remain unchanged.<sup>3</sup> Intervenor’s motions have only multiplied the volume of briefing while doing

25 \_\_\_\_\_  
26 <sup>3</sup> Mr. Ybarra specifically testified that LD 15 was not a racial gerrymander. Dkt. # 127-1 at 121:8-10. This should have immediately prompted his counsel to withdraw the request to file a crossclaim

1 nothing to develop the record or encourage the just and equitable adjudication of the claims at  
 2 issue. *See Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 947-48 (9th Cir. 1976) (affirming  
 3 dismissal of EEOC as intervenor-plaintiff where EEOC lacked any interest distinct from other  
 4 plaintiffs and the agency’s failed to deliver on assurances that its presence would not “delay or  
 5 prejudice the adjudication of the rights of the original parties but rather would materially aid in  
 6 expeditious determination of the issues and in the management of the litigation”).

7 If the Court concludes that counsel for the *Garcia* plaintiff must be disqualified due to a  
 8 conflict with a current or former client, Mr. Garcia’s search for new counsel would have no legal  
 9 bearing on the schedule in this case. *Garcia* involves a different claim before a different Court  
 10 subject to different jurisdictional and appellate rules. The *Garcia* suit was assigned to a three-judge  
 11 district court under 28 U.S.C. § 2284, which applies narrowly to claims alleging a constitutional  
 12 challenge to a congressional or statewide redistricting plan. Cases tried before a three-judge district  
 13 court can only be appealed directly to the Supreme Court, whose appellate jurisdiction is  
 14 mandatory, not discretionary. 28 U.S.C. § 1253. Courts of Appeals have no jurisdiction to review  
 15 the decisions of three-judge district courts. *Bogue v. Faircloth*, 441 F.2d 623, 623 (5th Cir. 1971).  
 16 This case, on the other hand, is properly heard before a single-judge Court because it involves only  
 17 statutory challenges under the VRA, which fall outside of § 2284’s narrow jurisdictional scope.  
 18 Any appeal taken from this Court’s decision must be heard by the Ninth Circuit, and Supreme  
 19 Court review would be discretionary. Although this Court recently ordered a consolidated trial  
 20 with simultaneous decisions to allow appeals to “proceed together,” Dkt. # 136 at 5, the appeals  
 21 of *Garcia* and *Soto Palmer* would necessarily proceed on separate tracks: *Garcia* would have to

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22  
 23 on his behalf, and save the Court and the other parties the time and expense associated with the  
 24 January 13, 2023 hearing. Instead—remarkably—Intervenors’ counsel submitted a filing asking  
 25 the Court to *strike from the docket* their clients’ sworn testimony disavowing the legal claim they  
 26 sought to advance and allow them nevertheless to file that claim in federal court on behalf of their  
 clients. Dkt. # 132; *see also* 28 U.S.C. § 1927 (“Any attorney . . . who so multiplies the proceedings  
 in any case unreasonably and vexatiously may be required by the court to satisfy personally the  
 excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.”).

1 go straight to the Supreme Court on direct mandatory review, while *Soto Palmer* would have to  
 2 go to the Ninth Circuit.

3 Thus, should Mr. Garcia require time to retain new counsel, the most prudent and efficient  
 4 course would be to hold *Garcia* in abeyance pending the disposition of Plaintiffs' VRA claims on  
 5 the existing schedule. Adjudication of Plaintiffs' VRA claim is a necessary predicate to resolve  
 6 Mr. Garcia's racial gerrymandering claim. As Intervenor's acknowledge in their Amended Answer,  
 7 Dkt. # 103 at 34, a legislative district is not an unconstitutional racial gerrymander if the VRA  
 8 requires its race-conscious drawing. If Plaintiffs prevail on their VRA claim, Mr. Garcia's claim  
 9 will become moot. The district he challenges will cease to exist, and the predicate of his claim—  
 10 that Section 2 does not require a Latino opportunity district in the Yakima area—will have been  
 11 rejected. Given the likelihood that Mr. Garcia's claim will become moot upon adjudication of this  
 12 case, the *Garcia* matter should be placed in abeyance pending resolution of this case to avoid the  
 13 need for the parties and the Court to expend resources that could prove unnecessary. At the very  
 14 least, a delay in the *Garcia* case should not lead to a delay in this case.

### 15 CONCLUSION

16 Plaintiffs respectfully request that neither the requested inquiries into potential ethical  
 17 violations nor their outcomes result in any further delay or disruption to the case management  
 18 schedule.

19  
 20 Dated: February 27, 2023

21 By: /s/ Edwardo Morfin

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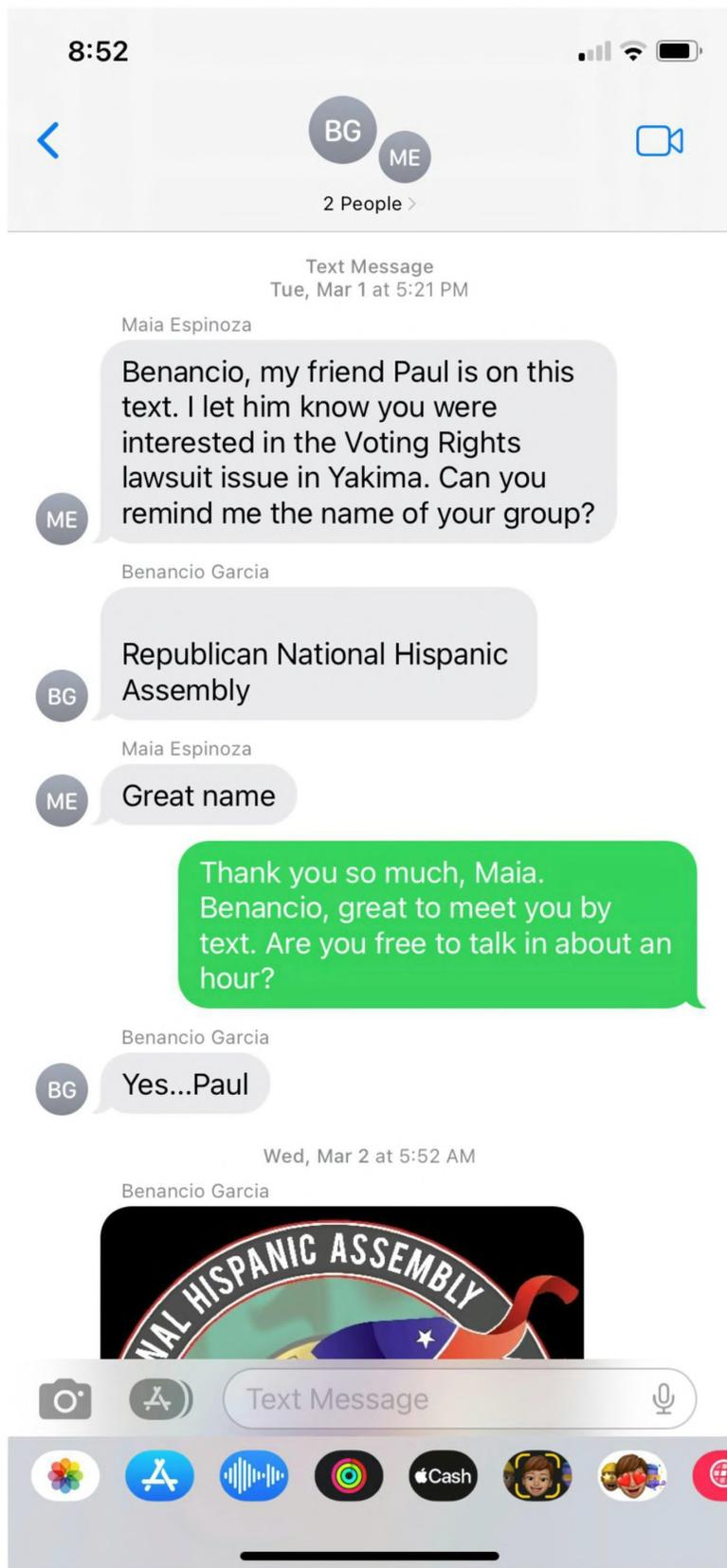
**CERTIFICATE OF SERVICE**

I certify that all counsel of record were served a copy of the foregoing this 27th day of February, 2023 via the Court's CM/ECF system.

/s/ Mark Gaber

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# Exhibit 1



## Exhibit 2

## Deposition of Benancio Garcia III

Garcia III v. Hobbs, et ano. / Palmer v. Hobbs, et al.

February 3, 2023



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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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BENANCIO GARCIA III, )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 3:22-cv-5152-RSL  
 )  
 STEVEN HOBBS, in his official )  
 capacity as Secretary of State )  
 of Washington, and STATE OF )  
 WASHINGTON, )  
 )  
 Defendants. )

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and )  
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 SUSAN SOTO PALMER, et al., )  
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 Plaintiffs, )  
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 v. ) No. 3:22-cv-5035  
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 SECRETARY OF STATE STEVEN )  
 HOBBS, in his official )  
 capacity as Secretary of State )  
 of Washington, et al. )  
 )  
 Defendants. )

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VIDEOCONFERENCE DEPOSITION UPON ORAL EXAMINATION OF  
BENANCIO GARCIA III

Tacoma, Washington

(All participants appeared via videoconference.)

DATE TAKEN: FEBRUARY 3, 2023

REPORTED BY: CINDY M. KOCH, RPR, CRR, CCR #2357

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A P P E A R A N C E S

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1 Q. Mr. Garcia, I think I just heard you say that  
2 the legislative district was drastically changed. And  
3 what I'm asking is, drastically changed from what?

4 A. Well, there's no land- -- particular landmark  
5 in that case, or highway, like I said, 82. Look, most  
6 of the district was in Yakima County, most of that  
7 district on 15th, and it drastically changed to three  
8 other counties. And it's very unusual.

9 And you can look at the Complaint. I mean, you  
10 don't have to agree with it, but, you know, you can see  
11 in the Complaint why -- you know, how it's drastically  
12 changed. It's kind of hard to describe sometimes, but,  
13 you know, it is there for everyone to see.

14 Q. No, understood. I'm just trying to get a sense  
15 of your understanding of the Complaint because this is  
16 your lawsuit ultimately.

17 A. Uh-huh. It is.

18 Q. Mr. Garcia, do you know any of the  
19 redistricting commissioners?

20 A. Do I know any of the redistricting  
21 commissioners? No, not -- not really. I mean, the ones  
22 that determined -- I think there was seven of them.

23 Q. Well, let me go to -- do you know Joe Fain?

24 A. Not -- no.

25 Q. Do you know Paul Graves?

1 A. I have contacted him once before, twice before,  
2 yes.

3 Q. How do you know Paul Graves?

4 A. Paul Graves. I was given a number that speaks  
5 to Paul Graves on redistricting, and we had discussed it  
6 for a few minutes on the redistricting.

7 Q. And what did you discuss?

8 A. I could say that we agreed that -- that the  
9 redistricting seemed to be racial gerrymandering.

10 Q. Can you -- do you remember anything else about  
11 that discussion?

12 A. No. It was very brief. It was very brief. I  
13 mean, I don't recall everything. I don't recall the  
14 conversation -- all the conversation. I'm just letting  
15 you -- I don't recall the -- but it was a brief  
16 conversation.

17 Q. Was it a phone call? In person? Zoom?

18 A. No, it was a phone call. Yeah, no, it was a  
19 phone call.

20 Q. And about when was that conversation?

21 A. I want to say the winter -- early winter 2022,  
22 possibly.

23 Q. So approximately January, February 2022?

24 A. It could be. You know, I -- I've had a lot of  
25 phone calls, so I apologize.

1 Q. Sure.

2 A. Running for congress, I've spoken to a lot of  
3 politicians on both ends.

4 Q. I can't even imagine.

5 A. So I know it was a brief conversation. And I  
6 don't recall everything on that conversation, so I  
7 apologize.

8 Q. To your memory, who was it that first  
9 suggested, in this phone call, that LD 15 was racial  
10 gerrymandering? Was it you or Mr. Graves?

11 A. I don't recall.

12 Q. You recall, though, that you both agreed with  
13 that?

14 A. I do -- I do recall that, yes, the sentiments  
15 were there. I mean, we didn't flat-out agree, but I had  
16 looked more into -- into things at that point.

17 Q. You didn't flat-out agree. What does that  
18 mean?

19 A. In other words, he didn't say clearly, oh, I  
20 agree that this -- you know. But we were -- we were  
21 talking in that perspective.

22 Q. Do you remember what he did say?

23 A. No, I don't.

24 Q. And you said you were given a number to speak  
25 with Mr. Graves. Who gave you the number?

1 A. That would have been Maia.

2 Q. Maia Espinoza?

3 A. That's correct.

4 Q. Okay. Would that have been in the first call  
5 with her?

6 A. I would assume so.

7 Q. How many phone calls did you have with  
8 Ms. Espinoza?

9 A. I had a few because I wanted to get pamphlets  
10 and talk about the pamphlets to hand out to people to  
11 register to vote, what their rights are, civics. It was  
12 a civics pamphlet.

13 Q. So you had a few conversations in which --  
14 strike that.

15 Did you have a few conversations in which this  
16 litigation was discussed, or the possibility of --

17 A. With her -- say that again?

18 Q. Yeah. Did you have multiple conversations with  
19 Ms. Espinoza in which you talked about a potential  
20 racial gerrymandering lawsuit?

21 A. No. No. We spoke about me wanting to see  
22 about the civics, getting pamphlets, and we also spoke  
23 about speaking to Paul. But, you know, that -- some of  
24 the challenges to try to get a number of pamphlets, they  
25 cost quite a -- you know, they cost money.

1 Had you known Paul before that conversation?

2 A. No, not that I'm aware of.

3 Q. And what do you know about Mr. Graves'  
4 involvement as -- or his work as a commissioner, as a  
5 redistricting commissioner?

6 A. Other than he's a commissioner, that's --  
7 that's it. I mean, there wasn't much discussion.

8 Q. Did you know that Mr. Graves and his staff were  
9 responsible for drawing District 15 in the adopted plan?

10 A. I am aware of that.

11 Q. Did it strike you as unusual that he was  
12 contacting you to discuss that the plan he had drawn was  
13 a racial gerrymander?

14 A. Well, he didn't contact me. I contacted him.

15 Q. Your understanding was that he was expecting  
16 your phone call; is that right?

17 A. Well, I don't know if he was expecting my phone  
18 call. It's been a little while, so I can't recall the  
19 whole thing. I know that Maia had given me his number.

20 Q. Okay.

21 A. So it's been a little while, so I apologize for  
22 that.

23 Q. But he had a conversation with you, and you  
24 took away from it that he was sympathetic to what you  
25 were expressing, that you thought there was a problem

1 that District 15 was a racial gerrymander; is that -- am  
2 I understanding that correctly?

3 A. Yes.

4 Q. And at the time, did you talk with him about  
5 the fact that he was heavily involved in drawing  
6 District 15?

7 A. Well, obviously he was heavily involved in  
8 drawing, but I know that the committee certainly did not  
9 go into complete agreement. There was a lot of issues  
10 on that for -- and you could look at the newspaper and  
11 you could see that they had passed the deadline, which  
12 was state law, in which they were supposed to  
13 adjudicate, to where it actually went to the courts.

14 Q. Are you aware that Mr. Graves has testified in  
15 this litigation that he was involved in lighting the  
16 fire for your lawsuit?

17 MR. HUGHES: Object. Misstates the  
18 evidence, misstates Mr. Graves' testimony.

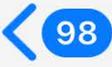
19 A. I'm sorry. Say again? I didn't hear that  
20 question.

21 BY MR. GABER:

22 Q. Are you aware that Mr. Graves has testified  
23 that he helped light the fire for your lawsuit?

24 MR. HUGHES: Objection. Misstates  
25 Mr. Graves' testimony.

## Exhibit 3



Paul Graves >

iMessage

Wed, Mar 2, 4:03 PM

Hi Ben. I've had a little family emergency to work through today. Have you heard from Rob Maguire or David Nordlinger from the Davis Wright law firm? I gave them your contact info

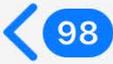
Hi Paul,  
I've been busy all day. Left a voicemail to make sure that whatever you need from me it gets done in time to file against the complaint in time. I will be at a Benton County Republican meeting tonight .

No, I have not gotten a call from either contact. I want



iMessage





Paul Graves >

complaint in time.  
I will be at a Benton County  
Republican meeting  
tonight .

No, I have not gotten a call  
from either contact. I want  
to make sure you get what  
is needed.

I hope all is alright for you  
and family.

We definitely will get what  
we need. Targeting a Friday  
deadline or perhaps early  
next week. Stand by

Ok...I just don't want to  
make a mistake with all I  
have going on.

Don't worry—I won't let you

Ok. This is about Justice...  
my heart and spirit is about



iMessage



2:22



< 98



Paul Graves >

Don't worry—I won't let you

Ok. This is about Justice... my heart and spirit is about service to God, Family, and Country!

Take care.

Thu, Mar 3, 9:04 AM

Have you had a chance to talk with people at the Republican National Hispanic assembly about this case? It would be terrific if it could serve as a plaintiff as well.

Fri, Mar 4, 2:07 PM

Ben, the lawyers sent an email to your yahoo address.



iMessage



2:23



Paul Graves >

Fri, Mar 4, 2:07 PM

Ben, the lawyers sent an email to your yahoo address.

Mon, Mar 7, 5:08 PM

Hi Paul,  
I signed the agreement.  
Thank you,  
Ben

Mon, Apr 11, 7:49 PM

I'm Ben Garcia III, candidate for WA04 U.S. Congress. I didn't let a housefire stop me from running for U.S. Congress. I understand today's challenges affecting our country. The United States, must be the shining light and beacon of freedom for



iMessage



## Exhibit 4

**From:** Paul Graves <paul@enterprisewashington.org>  
**Sent:** Friday, March 4, 2022 7:14 AM  
**To:** garciabenancio@yahoo.com; Robert Maguire <robmaguire@dwt.com>;  
David Nordlinger <DavidNordlinger@dwt.com>  
**Subject:** Introduction re redistricting lawsuits

---

Ben, Rob, David,

Rob and David are lawyers at Davis Wright Tremaine who are working on the redistricting lawsuit. Ben lives in Sunnyside and is excited about being involved. He is also involved with the National Republican Hispanic Assembly, which may also have the ability to join as a plaintiff or intervenor.

Paul Graves  
President, Enterprise Washington  
206-818-5607  
Sent from my phone

# Exhibit 5

## Aseem Mulji

---

**From:** Millstein, Aaron E. <Aaron.Millstein@klgates.com>  
**Sent:** Wednesday, February 22, 2023 11:27 AM  
**To:** Mark Gaber; Sonni Waknin  
**Cc:** McKay, Mike; Annabelle Harless; Aseem Mulji; Chad Dunn; Deylin Thrift-Viveros; Eddie Morfin; Ernest Herrera; Leticia Saucedo; Simone Leeper; Bernadette Reyes; Gwen Kelly  
**Subject:** RE: Soto Palmer v. Hobbs- Commissioner Subpoena Deficiency Letter [KLG-USW\_Active01.FID1297168]

Mark,

We appreciate you alerting us to the missing messages from the production but object to the characterization that Mr. Graves was seeking to have the legislative maps declared unconstitutional. As Mr. Graves stated in his deposition, his primary desire is for the maps to be upheld. He believes the maps both complied with the Voting Rights Act and did not violate the Equal Protection Clause.

Regarding the documents, Mr. Graves has re-run each of the names from the subpoena and confirmed that the only missing emails are the ones referenced in the text message you shared (Mr. Grave's initial email to Mr. Garcia and Rob Maguire's limited response). Through another search of his text messages, he discovered he had one exchange with Maia Espinoza and Benancio Garcia, where the Voting Rights lawsuit was mentioned. We are unsure why these two emails and message were not produced as part of our last production other than that they were excluded through an inadvertent mistake. We cannot specifically identify the cause for the mistake due to the passage of time. But we can assure you that there was no intentional withholding of any emails or other documents. The fact Mr. Graves already produced emails with Mr. Kincaid and the RSLC shows that Mr. Graves was not hiding these communications.

Although the discovery deadline for the Palmer lawsuit has closed, Mr. Graves will provide the two emails and message in a follow-up production.

Best,  
Aaron

**K&L GATES**

**Aaron E. Millstein**

K&L Gates LLP

Phone: (206) 370-8071

[aaron.millstein@klgates.com](mailto:aaron.millstein@klgates.com)

---

**From:** Mark Gaber <MGaber@campaignlegalcenter.org>  
**Sent:** Tuesday, February 21, 2023 7:33 AM  
**To:** Millstein, Aaron E. <Aaron.Millstein@klgates.com>; Sonni Waknin <sonni@uclavrp.org>  
**Cc:** McKay, Mike <Mike.McKay@klgates.com>; Annabelle Harless <aharless@campaignlegalcenter.org>; Aseem Mulji <amulji@campaignlegalcenter.org>; Chad Dunn <chad@uclavrp.org>; Deylin Thrift-Viveros <Dthrift-viveros@maldef.org>; Eddie Morfin <Eddie@morfinlawfirm.com>; Ernest Herrera <eherrera@maldef.org>; Leticia

Saucedo <LSaucedo@maldef.org>; Simone Leeper <SLeeper@campaignlegalcenter.org>; Bernadette Reyes <bernadette@uclavrp.org>; Gwen Kelly <gwen@uclavrp.org>

**Subject:** RE: Soto Palmer v. Hobbs- Commissioner Subpoena Deficiency Letter [KLG-USW\_Active01.FID1297168]

Aaron—

It has come to our attention that there are still missing documents from Mr. Graves's productions. For example, a subpoena issue to Mr. Benancio Garcia, the plaintiff in *Garcia v. Hobbs*, 22-5035 (W.D. Wash.), revealed the attached text message copying and pasting an email Mr. Garcia received from Mr. Graves coordinating his recruitment as a plaintiff for the case. This email – and any others like it – should have been produced by Mr. Graves.

Can you please follow up, collect, and produce any missing emails or text messages. In particular, it seems that Mr. Graves has withheld responsive communications related to his efforts to coordinate legal claims against the legislative plan.

Thanks,  
Mark Gaber

---

**From:** Millstein, Aaron E. <[Aaron.Millstein@klgates.com](mailto:Aaron.Millstein@klgates.com)>

**Sent:** Tuesday, November 8, 2022 7:54 PM

**To:** Sonni Waknin <[sonni@uclavrp.org](mailto:sonni@uclavrp.org)>

**Cc:** McKay, Mike <[Mike.McKay@klgates.com](mailto:Mike.McKay@klgates.com)>; Annabelle Harless <[aharless@campaignlegalcenter.org](mailto:aharless@campaignlegalcenter.org)>; Aseem Mulji <[amulji@campaignlegalcenter.org](mailto:amulji@campaignlegalcenter.org)>; Chad Dunn <[chad@uclavrp.org](mailto:chad@uclavrp.org)>; Deylin Thrift-Viveros <[Dthrift-viveros@maldef.org](mailto:Dthrift-viveros@maldef.org)>; Eddie Morfin <[Eddie@morfinlawfirm.com](mailto:Eddie@morfinlawfirm.com)>; Ernest Herrera <[eherrera@maldef.org](mailto:eherrera@maldef.org)>; Leticia Saucedo <[LSaucedo@maldef.org](mailto:LSaucedo@maldef.org)>; Mark Gaber <[MGaber@campaignlegalcenter.org](mailto:MGaber@campaignlegalcenter.org)>; Simone Leeper <[SLeeper@campaignlegalcenter.org](mailto:SLeeper@campaignlegalcenter.org)>; Bernadette Reyes <[bernadette@uclavrp.org](mailto:bernadette@uclavrp.org)>; Gwen Kelly <[gwen@uclavrp.org](mailto:gwen@uclavrp.org)>

**Subject:** RE: Soto Palmer v. Hobbs- Commissioner Subpoena Deficiency Letter [KLG-USW\_Active01.FID1297168]

Sonni,

As a follow-up to our meet and confer, I have the text messages from Commissioner Graves that we discussed. I will have the files posted to a Secure FTP for transfer. Please let me know who from your side needs access to the Secure FTP.

Thank you,  
Aaron

**K&L GATES**

**Aaron E. Millstein**

K&L Gates LLP

Phone: (206) 370-8071

[aaron.millstein@klgates.com](mailto:aaron.millstein@klgates.com)

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**From:** Millstein, Aaron E.

**Sent:** Wednesday, October 26, 2022 2:50 PM

**To:** 'Sonni Waknin' <[sonni@uclavrp.org](mailto:sonni@uclavrp.org)>

**Cc:** McKay, Mike <[Mike.McKay@klgates.com](mailto:Mike.McKay@klgates.com)>; Annabelle Harless <[aharless@campaignlegalcenter.org](mailto:aharless@campaignlegalcenter.org)>; Aseem Mulji <[amulji@campaignlegalcenter.org](mailto:amulji@campaignlegalcenter.org)>; Chad Dunn <[chad@uclavrp.org](mailto:chad@uclavrp.org)>; Deylin Thrift-Viveros <[Dthrift-viveros@maldef.org](mailto:Dthrift-viveros@maldef.org)>

[viveros@maldef.org](mailto:viveros@maldef.org)>; Eddie Morfin <[Eddie@morfinlawfirm.com](mailto:Eddie@morfinlawfirm.com)>; Ernest Herrera <[eherrera@maldef.org](mailto:eherrera@maldef.org)>; Leticia Saucedo <[LSaucedo@maldef.org](mailto:LSaucedo@maldef.org)>; Mark Gaber <[MGaber@campaignlegalcenter.org](mailto:MGaber@campaignlegalcenter.org)>; Simone Leeper <[SLeeper@campaignlegalcenter.org](mailto:SLeeper@campaignlegalcenter.org)>; Bernadette Reyes <[bernadette@uclavrp.org](mailto:bernadette@uclavrp.org)>; Gwen Kelly <[gwen@uclavrp.org](mailto:gwen@uclavrp.org)>  
**Subject:** RE: Soto Palmer v. Hobbs- Commissioner Subpoena Deficiency Letter [KLG-USW\_Active01.FID1297168]

Hi Sonni,

Yes, 12pm PT on November 3 would be great. Here is a dial-in number we can use: 1-800-270-2297,,15148066,#, #.

Best,  
Aaron

**K&L GATES**  
**Aaron E. Millstein**  
K&L Gates LLP  
Phone: (206) 370-8071  
[aaron.millstein@klgates.com](mailto:aaron.millstein@klgates.com)

**From:** Sonni Waknin <[sonni@uclavrp.org](mailto:sonni@uclavrp.org)>  
**Sent:** Wednesday, October 26, 2022 1:28 PM  
**To:** Millstein, Aaron E. <[Aaron.Millstein@klgates.com](mailto:Aaron.Millstein@klgates.com)>  
**Cc:** McKay, Mike <[Mike.McKay@klgates.com](mailto:Mike.McKay@klgates.com)>; Annabelle Harless <[aharless@campaignlegalcenter.org](mailto:aharless@campaignlegalcenter.org)>; Aseem Mulji <[amulji@campaignlegalcenter.org](mailto:amulji@campaignlegalcenter.org)>; Chad Dunn <[chad@uclavrp.org](mailto:chad@uclavrp.org)>; Deylin Thrift-Viveros <[Dthrift-viveros@maldef.org](mailto:Dthrift-viveros@maldef.org)>; Eddie Morfin <[Eddie@morfinlawfirm.com](mailto:Eddie@morfinlawfirm.com)>; Ernest Herrera <[eherrera@maldef.org](mailto:eherrera@maldef.org)>; Leticia Saucedo <[LSaucedo@maldef.org](mailto:LSaucedo@maldef.org)>; Mark Gaber <[MGaber@campaignlegalcenter.org](mailto:MGaber@campaignlegalcenter.org)>; Simone Leeper <[SLeeper@campaignlegalcenter.org](mailto:SLeeper@campaignlegalcenter.org)>; Bernadette Reyes <[bernadette@uclavrp.org](mailto:bernadette@uclavrp.org)>; Gwen Kelly <[gwen@uclavrp.org](mailto:gwen@uclavrp.org)>  
**Subject:** Re: Soto Palmer v. Hobbs- Commissioner Subpoena Deficiency Letter [KLG-USW\_Active01.FID1297168]

Hi Aaron,

Do you have availability to meet and confer on November 3rd, between 11am and 1pm PST on this matter?

Sincerely,  
Sonni Waknin

On Wed, Oct 19, 2022 at 4:45 PM Millstein, Aaron E. <[Aaron.Millstein@klgates.com](mailto:Aaron.Millstein@klgates.com)> wrote:

Counsel,

Attached please find the Commissioners' response to plaintiffs' deficiency letter. As stated in the letter, we look forward to scheduling a meet and confer to discuss this matter further.

Best,  
Aaron

**K&L GATES**

**Aaron E. Millstein**

K&L Gates LLP

Phone: (206) 370-8071

[aaron.millstein@klgates.com](mailto:aaron.millstein@klgates.com)

**From:** Sonni Waknin <[sonni@uclavrp.org](mailto:sonni@uclavrp.org)>

**Sent:** Wednesday, October 12, 2022 12:28 PM

**To:** Millstein, Aaron E. <[Aaron.Millstein@klgates.com](mailto:Aaron.Millstein@klgates.com)>; to: Sonni Waknin <[sonni@uclavrp.org](mailto:sonni@uclavrp.org)>; McKay, Mike <[Mike.McKay@klgates.com](mailto:Mike.McKay@klgates.com)>; Annabelle Harless <[aharless@campaignlegalcenter.org](mailto:aharless@campaignlegalcenter.org)>; Aseem Mulji <[amulji@campaignlegalcenter.org](mailto:amulji@campaignlegalcenter.org)>; Chad Dunn <[chad@uclavrp.org](mailto:chad@uclavrp.org)>; Deylin Thrift-Viveros <[Dthrift-viveros@maldef.org](mailto:Dthrift-viveros@maldef.org)>; Eddie Morfin <[Eddie@morfinlawfirm.com](mailto:Eddie@morfinlawfirm.com)>; Ernest Herrera <[eherrera@maldef.org](mailto:eherrera@maldef.org)>; Leticia Saucedo <[LSaucedo@maldef.org](mailto:LSaucedo@maldef.org)>; Mark Gaber <[MGaber@campaignlegalcenter.org](mailto:MGaber@campaignlegalcenter.org)>; Simone Leeper <[SLeeper@campaignlegalcenter.org](mailto:SLeeper@campaignlegalcenter.org)>; Bernadette Reyes <[bernadette@uclavrp.org](mailto:bernadette@uclavrp.org)>

**Cc:** Gwen Kelly <[gwen@uclavrp.org](mailto:gwen@uclavrp.org)>

**Subject:** Soto Palmer v. Hobbs- Commissioner Subpoena Deficiency Letter

Hi Counsel,

Please see the attached letter describing deficiencies with the subpoena production produced for Commissioners Walkinshaw, Sims, Graves, and Fain.

Sincerely,

Sonni Waknin

--

Sonni Waknin

Pronouns: She/Her/Hers

*Program Manager of the Voting Rights Project and Voting Rights Counsel*

UCLA Voting Rights Project

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**Sonni Waknin**

**Pronouns: She/Her/Hers**

*Program Manager of the Voting Rights Project and Voting Rights Counsel*

**UCLA Voting Rights Project**

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