

The Honorable Robert S. Lasnik

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

BENANCIO GARCIA III,

Plaintiff,

v.

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

Defendant.

NO. 3:22-cv-05152-RSL

MOTION TO JOIN REQUIRED  
PARTIES

NOTE ON MOTION CALENDAR:

May 27, 2022

**I. INTRODUCTION**

This Court should order the joinder of the State of Washington, the Redistricting Commission, and/or the members of the Redistricting Commission in their official capacities. Plaintiff Benancio Garcia III challenges the constitutionality of a state legislative district adopted as part of Washington's redistricting plan. But, like the plaintiffs in *Palmer v. Hobbs*, 3:22-cv-05035-RSL, Mr. Garcia's complaint named neither the Redistricting Commission (which adopted the challenged legislative districts) nor the State of Washington (on whose behalf the legislative districts were adopted). As it did in *Palmer*, this Court should order the joinder of an additional defendant or defendants here.

**II. BACKGROUND**

Mr. Garcia filed his complaint in this matter on March 15, 2022. The Complaint alleges that the state legislative redistricting plan (specifically Legislative District 15), approved by the

1 Redistricting Commission in November 2021, violates the Equal Protection Clause of the  
 2 Fourteenth Amendment to the United States Constitution. Dkt. # 1, ¶¶ 71-76. The complaint  
 3 identifies only a single defendant: Secretary of State Steven Hobbs, in his official capacity.  
 4 Dkt. # 1, ¶ 12. In the Joint Status Report filed with this Court on May 5, 2022, Secretary Hobbs  
 5 stated that he “takes no position on the merits of Plaintiff’s claims.” Dkt. # 9 at p. 1.

6 In the related case of *Palmer v. Hobbs*, on May 6, 2022, this Court entered an order  
 7 requiring joinder of the State of Washington pursuant to Rule 19(a)(1)(A) of the Federal Rules  
 8 of Civil Procedure and directed the plaintiffs in that matter to file an amended complaint adding  
 9 the State of Washington as a defendant. *Palmer v. Hobbs*, 3:22-cv-05035-RSL, Dkt. # 68 at p. 5.  
 10 At this time, Mr. Garcia has not filed an amended complaint naming any additional defendants  
 11 in this matter.

### 12 III. ARGUMENT

#### 13 A. Legal Standard Under Fed. R. Civ. P. 19

14 There are three elements to determining whether a person is a required party. First, the  
 15 person must be “subject to service of process[.]” Fed. R. Civ. P. 19(a)(1). Second, the person’s  
 16 joinder must “not deprive the court of subject-matter jurisdiction[.]” *Id.* Third, one of two  
 17 alternatives must apply. The first alternative is that “in that person’s absence, the court cannot  
 18 accord complete relief among the existing parties.” Fed. R. Civ. P. 19(a)(1)(A). The second  
 19 alternative is that the “person claims an interest relating to the subject of the action and is so  
 20 situated that disposing of the action in the person’s absence may: (i) as a practical matter impair  
 21 or impede the person’s ability to protect the interest; or (ii) leave an existing party subject to a  
 22 substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of  
 23 the interest.” Fed. R. Civ. P. 19(a)(1)(B). “There is no precise formula for determining whether  
 24 a particular nonparty should be joined under Rule 19(a) . . . . The determination is heavily  
 25 influenced by the facts and circumstances of each case.” *Equal Emp. Opportunity Comm’n v.*  
 26

1 *Peabody W. Coal Co.*, 610 F.3d 1070, 1081 (9th Cir. 2010) (ellipses in original) (quoting *N.*  
2 *Alaska Env't Ctr. v. Hodel*, 803 F.2d 466, 468 (9th Cir. 1986)).

3 Rule 19 proceeds to address additional considerations related to dismissal where joinder  
4 is not feasible. Fed. R. Civ. P. 19(b). Secretary Hobbs does not seek dismissal of this action.  
5 Joinder of the identified parties is feasible, so there is no need for this Court to address the “equity  
6 and good conscience” factors in Rule 19(b).

7 **B. The State of Washington is a Required Party**

8 The Washington Constitution creates a unique process for redistricting, relying on the  
9 leadership of the two largest political parties in each house of the Washington Legislature to  
10 appoint commissioners who serve on a temporary body. Wash. Const. art. II, § 43(2). That  
11 temporary body—the Redistricting Commission—is responsible for adopting a redistricting  
12 plan. *Id.* at § 43(6). The Washington Legislature may make only minor amendments; if the  
13 Legislature does not act, the Washington Constitution provides that the Redistricting  
14 Commission’s plan “constitutes the state districting law.” *Id.* at § 43(7). Implementation of that  
15 law is the shared responsibility of the Secretary and county election officials. Wash. Rev. Code  
16 §§ 29A.04.216, .230. The multiple actors and interwoven responsibilities create procedural  
17 complications in the event that the Court invalidates the current redistricting plan and orders the  
18 creation of a new, compliant plan. Ordering the joinder of the State of Washington would cut the  
19 Gordian knot.

20 The State of Washington is subject to service of process. *See* Wash. Rev. Code § 4.92.020  
21 (prescribing requirements for service of process in actions against the State). Its presence would  
22 not deprive the Court of subject-matter jurisdiction. This Court’s subject matter jurisdiction is  
23 based on the existence of a federal question, and joinder would not affect that. Nor does  
24 sovereign immunity appear to bar joinder of the State of Washington. While the Ninth Circuit  
25 has not addressed the issue, the weight of authority suggests that the Voting Rights Act  
26 abrogates state sovereign immunity. *E.g.*, *OCA-Greater Houston v. Texas*, 867 F.3d 604, 614

(5th Cir. 2017) (“The VRA, which Congress passed pursuant to its Fifteenth Amendment enforcement power, validly abrogated state sovereign immunity.”); *Mixon v. State of Ohio*, 193 F.3d 389, 399 (6th Cir. 1999) (concluding Congress validly abrogated state sovereign immunity in adopting the VRA); *Ga. State Conference of NAACP v. State*, 269 F. Supp. 3d 1266, 1275 (N.D. Ga. 2017) (concluding that “Section 2 effects a valid abrogation of state sovereign immunity”). *But see, e.g., N.C. State Conference of NAACP v. Cooper*, 397 F. Supp. 3d 786, 799-800 (M.D.N.C. 2019) (declining to follow *Mixon* and concluding that sovereign immunity barred VRA claim).<sup>1</sup> Even if sovereign immunity did apply, it may be waived. *Hill v. Blind Indus. & Servs. of Md.*, 179 F.3d 754, 760-63 (9th Cir. 1999), *as amended by* 201 F.3d 1186.

The primary issue is whether the Court can accord complete relief where Secretary Hobbs is the only defendant. For the reasons this Court recognized in *Palmer v. Hobbs*, the State of Washington is a necessary party to accord complete relief. As part of the relief sought, Mr. Garcia asks that this Court “[o]rder the creation of a new valid plan for legislative districts in the State of Washington . . . .” Dkt. # 1, ¶ 77(d). The Secretary does not have authority to create, or require the creation of a new plan. Under Washington law, the creation of a new state plan would require the coordinated efforts of the Legislature, its four caucus leaders, and the Redistricting Commission. Wash. Const. art. II, § 43; Wash. Rev. Code §§ 44.05.030, .080, .100, .120. The State of Washington is in the best position to represent the interests of the legislative branch and the independent redistricting commission and receive any necessary orders from the Court.

If the Court orders joinder of the State of Washington, the Redistricting Commission and its members may no longer be required parties, as the Court would be able to accord complete relief among existing parties.

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<sup>1</sup> The Secretary is not aware of any federal Circuit Court of Appeals decision rejecting the conclusion that the VRA abrogates state sovereign immunity.

**C. The Redistricting Commission and/or the Commissioners in Their Official Capacities are Required Parties**

The Redistricting Commission and/or its members are required parties. The Redistricting Commission and its members are subject to service of process. This is illustrated by the fact that they have been sued in Washington courts. *West v. Wash. State Redistricting Comm’n*, Thurston Cnty. Superior Court, No. 21-2-01949-34. Because the Redistricting Commission is headquartered in Olympia, Washington, and the commissioners are all residents of Washington, their joinder would not raise any personal jurisdiction issues. *See* Fed. R. Civ. P. 4(k)(1).

Joinder of the Redistricting Commission and/or its members also would not deprive this Court of subject matter jurisdiction. This Court’s subject matter jurisdiction is based on the existence of a federal question, and joinder would not affect that.

Both prongs of the third joinder element are satisfied as to at least some of the members. If this Court declines to join the State of Washington, then in the absence of the Redistricting Commission and/or its members, this Court cannot accord complete relief among the existing parties. As discussed above, Mr. Garcia seeks an order requiring the adoption of a new state redistricting plan. Under the Washington Constitution, only the Redistricting Commission has the authority, in the first instance, to adopt or revise the state legislative plan. Wash. Const. art. II, §§ 43(6), (8). While the Redistricting Commission would typically cease to exist as of July 1, 2022, the Washington Supreme Court may extend its term, Wash. Rev. Code § 44.05.110(2), and the Washington Legislature may reconvene the Commission, Wash. Const. art. XLIII, § 8.

In addition, at least two members of the Redistricting Commission had claimed an interest relating to the subject of this action. Specifically, commissioners Paul Graves and Joe Fain voted in favor of the Redistricting Commission intervening in the present litigation. Wash. State Redistricting Comm’n (March 7, 2022), at 15:42-15:50, *video recording by* TVW, Washington State’s Public Affairs Network, <https://tvw.org/video/washington-state-redistricting-commission-2022031203/?eventID=2022031203>. Commissioner Graves stated

1 that it struck him that “it would be a grave wrong for the Commission not even to present our  
 2 arguments to the court.” *Id.* at 6:11-6:15. As a practical matter, conducting this litigation in the  
 3 absence of the State or members of the Redistricting Commission impairs or impedes their ability  
 4 to protect their interest in ensuring that the work of the Redistricting Commission is fully  
 5 defended through the adversarial process.

6 Finally, Mr. Garcia’s complaint alleges that the Commission acted with a subjective  
 7 purpose that was impermissible. Dkt. # 1, ¶¶ 2, 61. The fact that the complaint is premised on  
 8 allegedly unlawful actions by the Commission also counsels in favor of making the Commission  
 9 and/or its members parties to this litigation.

#### 10 IV. CONCLUSION

11 Secretary Hobbs respectfully requests that this Court order joinder, pursuant to  
 12 Rule 19(a)(2), of the State of Washington, the Redistricting Commission, and/or its members.  
 13 This can be accomplished by ordering Plaintiff to file an amended complaint, *see AIG Property*  
 14 *Casualty Co. v. Green*, 172 F. Supp. 3d 468, 477 (D. Mass. 2016), or by other means.

15 RESPECTFULLY SUBMITTED this 12th day of May, 2022.

16 ROBERT W. FERGUSON  
 17 *Attorney General*

18 *s/ Karl D. Smith*  
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*Attorneys for Defendant Steven Hobbs*

**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 12th day of May 2022, at Olympia, Washington.

*s/ Kristin D. Jensen*  
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The Honorable Robert S. Lasnik

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Defendant.

NO. 3:22-cv-05152-RSL

ORDER GRANTING DEFENDANT  
STEVEN HOBBS' MOTION TO JOIN  
REQUIRED PARTIES  
[PROPOSED]

THIS MATTER having come on regularly for hearing before the undersigned judge of the above-entitled Court upon Defendant Steven Hobbs' Motion to Join Required Parties, and the parties being represented by their counsel of record, and the Court having examined the records and files herein, and being fully advised in the matter; now therefore,

IT IS HEREBY ORDERED that Defendant Steven Hobbs' Motion to Join Required Parties is GRANTED. Plaintiff is directed to file an amended complaint including as defendants the Washington State Redistricting Commission, the commissioners of the Redistricting Commission in their official capacities, and the State of Washington.

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

THE HONORABLE ROBERT S. LASNIK  
United States District Court Judge

1 Presented by:

2 ROBERT W. FERGUSON  
3 *Attorney General*

4 *s/ Karl D. Smith*

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