

The Honorable J. Robert S. Lasnik
The Honorable David G. Estudillo
The Honorable Lawrence Van Dyke

**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, et al.

Defendants.

NO. 3:22-cv-05152-RSL-DGE-LJCV

TRIAL BRIEF OF DEFENDANT
STEVE HOBBS

Defendant Secretary of State Steve Hobbs takes no position on the merits of Plaintiff’s claim. Secretary Hobbs had no role in designing the legislative redistricting plan that Plaintiff challenges. Secretary Hobbs did not draw, did not direct, and did not approve that plan. Designing the redistricting plan is primarily the responsibility of the Washington State Redistricting Commission, which is an independent constitutional body over which Secretary Hobbs has no control. Wash. Const. art. II, § 43. The Secretary’s role with respect to implementing the redistricting plan is largely ministerial, such as accepting candidate filings for certain legislative districts. Wash. Rev. Code § 29A.24.070(2).

Issues pertaining to any remedy should be addressed only if—and only after—this Court enters a decision in favor of Plaintiff. While the Secretary requests the opportunity to provide further briefing at such a time, the Secretary has two preliminary points related to any remedy.

1 First, if Plaintiff prevails, any remedy should not interfere the ability of election officials
2 to meet election deadlines. *See Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam). “This Court
3 has repeatedly stated that federal courts ordinarily should not enjoin a state's election laws in the
4 period close to an election, and this Court in turn has often stayed lower federal court injunctions
5 that contravened that principle.” *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J.,
6 concurring in grant of application for stays). In this case, the parties’ Proposed Pretrial Order
7 contains an agreed fact that “March 25, 2024 is the latest date a finalized legislative district map
8 must be transmitted to counties without significantly disrupting the 2024 election cycle.”
9 Dkt. 64 at 12 (¶ 85); *see also* Dkt. 59 at 2-6 (declaration of Director of Elections Stuart Holmes
10 discussing deadlines). Any remedy should avoid requiring implementation of new legislative
11 maps for purposes on the 2024 elections unless the maps are finalized and transmitted to counties
12 by March 25, 2024.

13 Second, if Plaintiff prevails, fees and costs should not be awarded against Secretary
14 Hobbs. At least in certain situations, attorneys’ fees and costs under 52 U.S.C. § 10310(e) and
15 42 U.S.C. § 1988 are not available against “‘blameless’” defendants who are “‘not charged with
16 any wrongdoing.” *Brat v. Personhuballah*, 883 F.3d 475, 476, 481-82, 484 (4th
17 Cir. 2018) (quoting *Indep. Fed’n of Flight Attendants v. Zipes*, 491 U.S. 754, 762 (1989)); *see*
18 *also Costco Wholesale Corp. v. Hoen*, 538 F.3d 1128, 1133 (9th Cir. 2008) (recognizing that the
19 *Zipes* rule extends to 42 U.S.C. § 1988). The policies underlying the fee-shifting statutes are
20 (1) “‘that wrongdoers make whole those whom they have injured,’” and (2) “‘detering’”
21 unlawful behavior. *Brat*, 883 F.3d at 481 (quoting *Zipes*, 491 U.S. at 762). While the Secretary
22 is not an intervenor, as was the case in *Zipes* and *Brat*, the policies apply with equal force here.
23 The Secretary is not responsible for the alleged wrong at issue in this case. The Secretary did not
24 design the challenged legislative district and does not have authority to alter it; the Secretary’s
25 implementation of the legislative district is in pursuit of the Secretary’s ministerial duties. As a
26

1 result, an award against the Secretary—who has taken no position and been no barrier to Plaintiff
2 Garcia in this case—would not advance a policy of deterrence.

3 Even if attorneys’ fees are not precluded as a matter of law, this Court has discretion,
4 *see* 42 U.S.C. § 1988(b) (the court, “in its discretion, may allow . . . a reasonable attorney’s fee”);
5 52 U.S.C. 10310(e) (same), and the circumstances of this litigation counsel strongly against an
6 award of fees or costs against the Secretary. In addition to the policies addressed in the previous
7 paragraph, it also bears noting that Plaintiff Garcia would not be without the opportunity to seek
8 fees; fees may still be available against the State.

9 DATED this 31st day of May, 2023.

10 ROBERT W. FERGUSON
11 *Attorney General*

12 *s/ Karl D. Smith*
13 KARL D. SMITH, WSBA 41988
14 *Deputy Solicitor General*
15 1125 Washington Street SE
16 PO Box 40100
17 Olympia, WA 98504-0100
18 (360) 753-6200
19 Karl.Smith@atg.wa.gov
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system.

DATED this 31st day of May 2023, at Olympia, Washington.

s/ Leena Vanderwood
LEENA VANDERWOOD
Legal Assistant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26