

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
27
28

The Honorable Robert S. Lasnik

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

SUSAN SOTO PALMER, et. al.,

Plaintiffs,

v.

STEVEN HOBBS, et. al.,

Defendants.

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

**PLAINTIFFS’ OPPOSITION TO
MOTION TO DISMISS
DEFENDANTS LAURIE
JENKINS AND ANDREW
BILLIG**

Judge: Robert S. Lasnik

NOTE ON MOTION CALENDER:
March 18, 2022

INTRODUCTION

Plaintiffs respectfully submit this response in opposition to Defendants Laurie Jenkins’s and Andrew Billig’s Motion to Dismiss. [Dkt. 37]. Defendants Jenkins and Billig move for dismissal on grounds that they are improper parties. The Court should deny the motion. Defendants Jenkins and Billig are proper defendants because, as leaders of the Washington House and Senate, they are state officials with power to initiate action to alter state legislative boundaries and thereby provide some requested relief.

BACKGROUND

A. Procedural History

On January 19, 2022, Plaintiffs filed their complaint challenging the legislative redistricting plan drawn by the Washington State Redistricting Commission (“Commission”) and approved by the Washington Legislature. *See* Compl. Plaintiffs’ complaint alleges that Legislative District 15 was drawn to create the façade of a Latino opportunity district but in fact dilutes Latino voting power in violation of Section 2 of the federal Voting Rights Act (VRA). *Id.* ¶¶ 34, 273-83.

To remedy this violation, Plaintiffs seek declaratory and injunctive relief. They request a declaration that the state’s legislative redistricting plan violates Section 2. *Id.*, Prayer for Relief, ¶¶ (a)-(b). They seek an order preliminarily and permanently enjoining Defendants from conducting elections under this invalid plan. *Id.*, ¶ (c).¹ And they request that the Court “order the implementation and use of a valid state legislative plan,” as well as “any and all further relief” necessary to cure the violation. *Id.*, ¶¶ (d), (f)-(g).

The complaint names three state officials as defendants against whom the Court could order Plaintiffs’ requested relief. It names Steven Hobbs, who in his official capacity as Secretary of State oversees and administers elections in accordance with the state’s redistricting plans. *Id.* ¶ 59. It also names the state’s legislative leaders as representatives of the Washington Legislature: Laurie Jenkins in her official capacity as Speaker of the House, and Andrew Billig in his official capacity as Senate Majority Leader (collectively, “Legislative Defendants”). *Id.* ¶¶ 60-61.

¹ Plaintiffs have moved for a preliminary injunction to bar use of the legislative district plan in any election, including the 2022 elections, pending resolution of the suit. Dkt. 38.

1 **B. The Legislature’s Necessary Role in Developing and Modifying Redistricting Plans**

2 Although the task of drawing legislative districts is vested in the Commission, the
3 Washington Constitution assigns the Legislature key responsibilities in the redistricting process
4 that bear directly on Plaintiffs’ request for relief.

5 As an initial matter, the Commission cannot even begin its work until the Legislature
6 enacts laws providing for the Commission’s convening and operation, including any additional
7 governing standards and commissioner qualifications. Wash. Const. art. II, §§ 43(1), (4);
8 Compl. ¶ 99. In addition, the leaders of the two largest political parties in each legislative
9 chamber (including Defendants Jenkins and Billig) must each appoint one of the four voting
10 members of the Commission. Compl. ¶ 101 (citing Wash. Const. art. II, § 43(2)).

11 After drawing and approving redistricting plans with a vote of at least three
12 commissioners, the Commission must transmit the plans to the Legislature by November 15 of
13 the year ending in one. *Id.* ¶ 105 (citing RCW 44.05.110).² The Legislature has thirty days
14 during the next legislative session to amend the plans by an affirmative vote of two-thirds of
15 the members in each chamber; such amendments may not impact more than “two percent of
16 the population of any legislative or congressional district.” *Id.* ¶¶ 106-07. After the thirty
17 session days are up, the Commission’s plan, including any legislative amendments, becomes
18 the state’s districting law. Wash. Const. art. II, § 43(7).

19 Once redistricting plans have been transmitted to the Legislature, the Commission’s
20 work is done—it “shall take all necessary steps to conclude its business and cease operations”
21 and must “cease to exist on July 1st of each year ending in two.” RCW 44.05.110. The
22

23
24
25
26
27 ² If the Commission misses this deadline, the Washington Supreme Court must adopt a map by April 30th of the
28 year ending in two. Wash. Const. art. II, § 43(6); RCW 44.05.100(4).

1 Commission cannot modify an enacted redistricting plan unless the Legislature first decides to
2 reconvene the Commission for that limited purpose by an affirmative vote of two-thirds of the
3 members in each chamber. Wash. Const. art. II, § 43(7); RCW 44.05.120; Compl. ¶ 108.

4
5 Defendants Jinkins and Billig are state officials with power to call for a vote to
6 reconvene the Commission and initiate “the implementation and use of a valid state legislative
7 plan that includes a majority-Latino state legislative district in the Yakima Valley region that
8 does not dilute, cancel out, or minimize the voting strength of Latino voters.” Compl., Prayer
9 for Relief, ¶ (d); *id.* ¶¶ 60-61.

10 **C. Washington’s 2021 Legislative Redistricting Process**

11
12 The Commission transmitted state legislative and congressional redistricting plans to
13 the Legislature in the early hours of November 16, 2021. On December 3, 2021, the
14 Washington Supreme Court found that the Commission had completed its redistricting duties
15 by the constitutional deadline. *See Order Regarding the Washington State Redistricting*
16 *Commission’s Letter to the Supreme Court on November 16, 2021*, No. 25700-B0676 (Wash.
17 Sup. Ct. December 3, 2021). On February 8, 2022, the Legislature, led by Speaker Jinkins and
18 Senator Billig in their respective chambers, enacted amendments to the Commission’s
19 redistricting plan within the first thirty days of the 2022 regular session through House
20 Concurrent Resolution 4407 (HCR 4407).³

21
22 Now that state legislative districts have been enacted, only the Legislature can initiate
23 the process to modify them to afford Plaintiffs their requested relief in the normal course of the
24 Washington redistricting process. RCW 44.04.120. Indeed, the Commission has begun winding
25
26

27 ³ The legislative history of HCR 4407 is available online at:
28 <https://app.leg.wa.gov/billsummary/?billNumber=4407&year=2022&initiative=False>.

1 down its operation and held its final regular business meeting on January 18, 2022.⁴ In a March
2 7, 2022 special business meeting, the Commission discussed possibly intervening in this case
3 but declined to do so.⁵ Without action by the Legislature, the Commission lacks any authority
4 to modify the state’s legislative district plan to afford Plaintiffs their requested relief, *see* RCW
5 44.05.120, and will cease to exist by July 1, 2022, *see* RCW 44.05.110.
6

7 8 **LEGAL STANDARD**

9 To overcome a motion to dismiss, a complaint must “contain sufficient factual matter,
10 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556
11 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, at 570 (2007)). The
12 complaint need not set out “detailed factual allegations” but rather simply contain “more than
13 labels and conclusions, and a formulaic recitation of the elements.” *Twombly*, 550 U.S. at 555.
14 A plausible claim includes “factual content that allows the court to draw the reasonable
15 inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.
16 Motions to dismiss are generally “viewed with disfavor and rarely granted.” *McDougal v.*
17 *Cnty. of Imperial*, 942 F.2d 668, 676 n.7 (9th Cir. 1991).
18
19
20
21
22
23

24
25 ⁴ Washington State Redistricting Commission, January 18th Regular Business Meeting, at 06:28-06:52 (Jan. 18, 2022), <https://tvw.org/video/washington-state-redistricting-commission-2022011465/?eventID=2022011465>.

26 ⁵ Washington State Redistricting Commission, March 7th Special Business Meeting, at 15:58 (Mar. 7, 2022),
27 <https://tvw.org/video/washington-state-redistricting-commission-2022031203/?eventID=2022031203>; *see also*
28 Joanna Markell, *WA Redistricting Commission Won’t Intervene In Voting Rights Lawsuit; Chair Resigns*, YAKIMA
HERALD-REPUBLIC (Mar 7, 2022), https://www.yakimaherald.com/news/local/wa-redistricting-commission-wont-intervene-in-voting-rights-lawsuit-chair-resigns/article_20827ca1-24cc-539b-9015-395796869a9a.html.

ARGUMENT

I. Plaintiffs' Complaint States a Valid Claim Against Legislative Defendants.

Legislative Defendants do not argue that Plaintiffs have failed to state a plausible VRA Section 2 violation. Nor could they. Plaintiffs' complaint contains detailed factual allegations supporting their claims that Legislative District 15 dilutes Latino voting power and was drawn with that intent in violation of Section 2. Instead, Legislative Defendants argue that the complaint does not request relief against Speaker Jenkins or Senator Billig in particular, and thus fails to state a claim against them. *See* Mot. to Dismiss ("Mot.") at 6-7. This is wrong and based on a selective reading of the complaint's prayer for relief and its factual allegations.

Plaintiffs' complaint requests not only that the state's legislative redistricting plan "be declared invalid," Mot. at 7, but also that this Court "order the implementation and use of a new valid state legislative plan." Compl., Prayer for Relief, ¶ (d). The complaint's factual allegations make clear that this claim for relief is directed against Speaker Jenkins and Senator Billig in their capacities as leaders of the Washington Legislature, which has the exclusive power to initiate modifications to the legislative redistricting plan. *Id.* ¶¶ 60-61, 108. As Legislative Defendants concede, the state cannot draw a new valid legislative redistricting plan unless the Legislature first reconvenes the Commission to make necessary modifications. *Id.* ¶ 108 (citing RCW 44.05.120); *see also* Wash. Const. art. II, § 43(7).

Should Plaintiffs prevail, a remedial order of this Court granting their requested relief would likely provide the Legislature an opportunity to reconvene the Commission during a window of time before the Court imposes its own map, as is common in redistricting litigation. *See, e.g., Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) ("When a federal court declares an existing apportionment scheme unconstitutional, it is therefore, appropriate, whenever

1 practicable, to afford a reasonable opportunity for the legislature to meet constitutional
 2 requirements by adopting a substitute measure rather than for the federal court to devise and
 3 order into effect its own plan.”); *McDaniels v. Mehfoud*, 702 F. Supp. 588, 596 (E.D. Va.
 4 1988) (“[I]n exercising its equitable powers, the Court should give the appropriate legislative
 5 body the first opportunity to provide a plan that remedies the violation If the affected
 6 legislative body fails to respond, or responds with a proposed remedy that itself constitutes a §
 7 2 violation, then the Court must fashion an appropriate plan.” (citations omitted)). As state
 8 officials who lead the chambers of the Washington Legislature, *see* Compl. ¶¶ 60-61, Speaker
 9 Jinkins and Senator Billig are the named defendants against whom such a remedial order
 10 would be directed.
 11
 12

13 Thus, Plaintiffs’ Complaint facially states a valid claim against Defendants Jinkins and
 14 Billig and pleads facts sufficient to draw a reasonable inference that the Court could grant
 15 requested relief against them.

16 **II. Representative Jinkins and Senator Billig are Proper Defendants.**

17 In addition to attacking the sufficiency of Plaintiffs’ pleading (to no avail), Legislative
 18 Defendants also wrongly argue that, as two individuals among many “individual members of
 19 their respective chambers,” Mot. at 6, they are not proper defendants.
 20

21 Courts have long and frequently found individual state legislators, including legislative
 22 leaders, to be proper defendants in redistricting litigation. *See, e.g., Thornburg v. Gingles*, 478
 23 U.S. 30 (1988) (President of Senate and Speaker of House named in seminal VRA vote
 24 dilution case); *Karcher v. Daggett*, 462 U.S. 725 (1983) (Speaker of New Jersey Assembly
 25 named in case challenging reapportionment of congressional districts); *Cano v. Davis*, 191 F.
 26 Supp. 2d 1135 (C.D. Cal. 2002), *aff’d*, 537 U.S., 1100 (2003) (President Pro Tempore of
 27
 28

1 Senate and Speaker of State Assembly named in challenge to the California’s state and
2 congressional 2001 redistricting); *DeJulio v. Georgia*, 127 F. Supp. 2d 1274, 1294 (N.D. Ga.
3 2001) (finding Georgia House of Representatives and Senate not proper parties but permitting
4 suit to proceed against individual members of those bodies in their official capacities who were
5 named defendants).⁶

7 Legislative Defendants cite no relevant case to support their desired dismissal from this
8 lawsuit. Instead, they cite cases in which out-of-circuit courts determined that a state legislature
9 (the body itself) was not a necessary party for complete relief under Federal Rule of Civil
10 Procedure 19. *See, e.g., Hellebust v. Brownback*, 42 F. 3d 1331, 1335 (10th Cir. 1994). Here,
11 Plaintiffs are not suing the Washington Legislature but instead individual legislative leaders
12 against whom remedial orders can be directed.

14 Legislative Defendants also seem to suggest that Plaintiffs should sue the Washington
15 Legislature, noting that the body itself has the authority to reconvene the Commission, not
16 individual legislators. Mot. at 1, 6. But it is possible that the Legislature would raise a
17 sovereign immunity defense, *see Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 54 (1996),
18 and the Legislature has made no apparent indication that it would consent to suit. Instead,
19 plaintiffs may safely sue for declaratory or injunctive relief against individual state officers in
20 their official capacity to enjoin an alleged ongoing violation of federal law. *See Hason v.*
21 *Medical Bd. of California*, 279 F.3d 1167, 1171 (9th Cir. 2002) (citing *Ex Parte Young*
22
23
24
25

26 ⁶ *See also Backus v. South Carolina*, 857 F. Supp. 2d 553 (D.S.C. 2012); *Favors v. Cuomo*, 881 F. Supp. 2d 356
27 (E.D.N.Y. 2012); *Bone Shirt v. Hazletine*, 200 F. Supp. 2d 1150 (D.S.D. 2002); *Metts v. Murphy*, 363 F.3d 8 (1st
28 Cir. 2004); *Parker v. Ohio*, 263 F. Supp. 2d 1100 (S.D. Ohio 2003); *Martinez v. Bush*, 234 F. Supp. 2d 1275 (S.D.
Fla. 2002); *Page v. Bartels*, 144 F. Supp. 2d 346 (D.N.J. 2001).

1 doctrine);⁷ *see also Hall v. Louisiana*, No. 12–00657, 2015 WL 1475062, at *4 (M.D. La. Mar.
2 31, 2015) (finding a Voting Rights Act claim viable against a state official in his official
3 capacity where he had “power to provide at least some of the injunctive relief requested”).
4 Plaintiffs allege an ongoing violation of federal law here which Legislative Defendants, as
5 representatives of the Legislature, have at least some power to remedy. *See* RCW 44.05.110;
6 44.05.120. Legislative Defendants are plainly proper parties to this suit.⁸

8 **CONCLUSION**

9 For these reasons, Plaintiffs respectfully request that this Court deny Defendants
10 Jenkins’s and Billig’s motion to dismiss them as parties to this action.

12 Dated: March 14, 2022

14 By: /s/Edwardo Morfin

15 Chad W. Dunn*
16 Sonni Waknin*
17 UCLA Voting Rights Project
18 3250 Public Affairs Building
19 Los Angeles, CA 90095
20 Telephone: 310-400-6019
21 Chad@uclavrp.org
22 Sonni@uclavrp.org

Edwardo Morfin
WSBA No. 47831
Morfin Law Firm, PLLC
2602 N. Proctor Street, Suite 205
Tacoma, WA 98407
Telephone: 509-380-9999

21 Mark P. Gaber*
22 Simone Leeper*
23 Aseem Mulji*
24 Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005

Annabelle Harless*
Campaign Legal Center
55 W. Monroe St., Ste. 1925
Chicago, IL 60603
aharless@campaignlegal.org

Thomas A. Saenz*
Ernest Herrera*

25 ⁷ Under the *Ex Parte Young* Doctrine, private litigants may sue for prospective injunctive relief against state officers
26 in their official capacity to enjoin alleged ongoing violation of federal law. *See Hason*, 279 F.3d at 1171.

27 ⁸ Defendants’ argument that Legislative Defendants’ minority party counterparts ought to be included due to
28 bipartisanism holds no merit. Plaintiffs filed suit against the leaders of each house of the Washington Legislature
without regard for partisan affiliation, as persons who hold these leadership positions have some power to provide
relief.

1 mgaber@campaignlegal.org
2 sleeper@campaignlegal.org
3 amulji@campaignlegal.org

Leticia M. Saucedo*
Deylin Thrift-Viveros*
Mexican American Legal Defense and
Educational Fund
643 S. Spring St., 11th Fl.
Los Angeles, CA 90014
Telephone: (213) 629-2512
tsaenz@maldef.org
eherrera@maldef.org
lsaucedo@maldef.org
dthrift-viveros@maldef.org

4
5
6
7
8 *Admitted pro hac vice

9 *Counsel for Plaintiffs*
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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
27
28

CERTIFICATE OF SERVICE

I certify that all counsel of record were served a copy of the foregoing this 14th day of March 2022 via the Court’s CM/ECF system.

/s/ Edwardo Morfin
Edwardo Morfin
WSBA No. 47831
Morfin Law Firm, PLLC
2602 N. Proctor Street, Suite 205
Tacoma, WA 98407
Telephone: 509-380-9999