

I. INTRODUCTION

1
2 Plaintiffs maintain that their Complaint for Declaratory and Injunctive Relief
3 (Complaint) seeks relief against Defendants Representative Laurie Jinkins (Speaker of the
4 House of Representatives) (Speaker Jinkins) and Senator Andrew Billig (Majority Leader of the
5 Washington State Senate) (Senator Billig), despite nowhere asking for such relief in the text of
6 their Complaint. Their theory is that Speaker Jinkins and Senator Billig are proper parties for the
7 purpose of any relief that this Court might order. But Defendant Secretary of State Steven Hobbs,
8 not Speaker Jinkins or Senator Billig, is the state's chief elections officer. Plaintiffs are therefore
9 reduced to arguing that Speaker Jinkins and Senator Billig are proper parties because they can
10 ask the Legislature to vote on a resolution to reconvene the bipartisan Washington State
11 Redistricting Commission (Commission). This argument is insufficient to state a claim against
12 Speaker Jinkins and Senator Billig because:

- 13 • At present, there is no need to reconvene the Commission. It still exists until July 1,
14 2022, and therefore can simply decide on its own to meet if it became necessary for
15 that body to take some action;
 - 16 • The Legislature is not currently in session and therefore cannot currently entertain a
17 request by Speaker Jinkins or Senator Billig to reconvene the Commission;
 - 18 • For the Legislature to convene in special session would require either a proclamation
19 of the Governor (who is not a party to this action) or a resolution first considered by
20 the Rules Committees of the House of Representatives and Senate (which committees
21 are not parties to this action) and approved by two-thirds of the members of each
22 House; and
 - 23 • No legislative action to reconvene the Commission is necessary because as an
24 alternative the Washington Supreme Court has the authority by court order to extend
25 the Commission's term.
- 26

1 Accordingly, the Complaint states no claim against Speaker Jenkins or Senator Billig on
2 which relief may be granted. The Court should grant the Motion to Dismiss.

3 II. ARGUMENT

4 A. The Complaint Literally Fails To Request Any Relief Against Jenkins or Billig

5 Plaintiffs purport to ground their decision to name Speaker Jenkins and Senator Billig in
6 the ability of a member of the Legislature to call for a vote to reconvene the Commission.
7 Plaintiffs fail to establish that their Complaint states a claim against Speaker Jenkins and
8 Senator Billig on which relief can be granted for several reasons.

9 The Complaint quite literally asks for no relief against Speaker Jenkins or Senator Billig.
10 It does recite, *as an allegation of fact*, that as members of the Legislature either or both of them
11 (in common with any or all of their colleagues) may request a legislative vote on a proposal to
12 reconvene the Washington State Redistricting Commission (Commission). Compl., ¶¶ 60–61.
13 Plaintiffs point out that the Complaint asks this Court to “order the implementation and use of a
14 new valid state legislative plan.” Plaintiffs’ Opposition to Motion to Dismiss Defendants Laurie
15 Jenkins and Andrew Billig (Opp’n.) at 6 (quoting Compl., Prayer for Relief, ¶ (d)).

16 Plaintiffs aptly point out that federal courts will generally give the appropriate state
17 authority an opportunity to adopt a substitute measure before devising a court-ordered plan.
18 Opp’n at 6–7. That point, however, does not add language to their Complaint that Plaintiffs did
19 not include in it. It remains true that nowhere in the Complaint do Plaintiffs ask this Court to
20 order Speaker Jenkins and Senator Billig to do anything.

21 Moreover, the entity empowered to adopt a substitute plan, if one is needed, is not the
22 Legislature. It would be the Commission. Wash. Const. art. II, § 43. That makes this case unlike
23 the cases Plaintiffs cite for the proposition that legislators may be proper parties. In all of those
24 cases, the Legislature, not a separate body, created the redistricting plan at issue. Opp’n. at 7–8;
25 *see Thornburg v. Gingles*, 478 U.S. 30, 106 S. Ct. 2752 (1986) (North Carolina General
26 Assembly (legislature) enacted a redistricting plan); *Karcher v. Daggett*, 462 U.S. 725, 727–28,

1 103 S. Ct. 2653 (1983) (New Jersey Legislature adopted a redistricting plan); *Cano v. Davis*,
2 191 F. Supp. 2d 1135, 1136 (C.D. Cal. 2001) (California Legislature enacted a redistricting
3 plan); *DeJulio v. Georgia*, 127 F. Supp. 2d 1274, 1282 (N.D. Ga. 2001), *aff'd in part, rev'd in*
4 *part*, 276 F.3d 1244 (11th Cir. 2001) (not a challenge to a redistricting plan but to the method by
5 which the Georgia Legislature enacted local legislation). The cases Plaintiffs cite for the
6 proposition that legislators are frequently made parties to cases under the Voting Rights Act are
7 therefore inapposite because in Washington, unlike those states, the Legislature does not devise
8 the redistricting plan.

9 More importantly, none of those cases consider the question of whether legislators are
10 proper parties in a Voting Rights Act case. Plaintiffs cite them simply as examples of cases in
11 which legislators were named. But a case is not authority for a legal conclusion that it does not
12 discuss. It therefore avails Plaintiffs of nothing to cite examples of cases in which legislators
13 were named but in which they did not move to be dismissed for failure to state a claim against
14 them.

15 **B. Speaker Jinkins and Senator Billig Are Not Necessary Parties for the**
16 **Implementation of Any Remedy Plaintiffs Seek**

17 Plaintiffs' central point is that Speaker Jinkins and Senator Billig are proper parties
18 because of the potential that this Court will conclude that the existing boundaries of Legislative
19 District 15 fail to comply with section 2 of the Voting Rights Act. Assuming for the sake of
20 argument that the Court so concludes, that does not state a claim against Speaker Jinkins or
21 Senator Billig. The entry of an injunction, directed at Defendant Hobbs, precluding the use of
22 the current boundaries of Legislative District 15 but giving the State a chance to develop an
23 alternative does not necessitate that legislators be parties to this case. The Washington
24 Constitution provides two mechanisms by which the Commission could proceed to develop a
25 remedy to any legal defect. Plaintiffs point to the potential for the Legislature, by a two-thirds
26 vote, to reconvene the Commission. Wash. Const. art. II, § 43(8); RCW 44.05.120. Note,

1 however, that the Legislature’s authority to do so does not arise until the Commission ceases to
2 exist. RCW 44.05.120(1). That does not happen until July 1, 2022, and so this avenue for
3 reconvening the Commission does not arise on a time frame relevant to the present motion for
4 preliminary injunction. RCW 44.05.110. In the meantime, it could be unnecessary for the
5 Legislature to reconvene the Commission because it still exists and can meet as needed. *See id.*
6 So the presence of Speaker Jinkins and Senator Billig is unnecessary to fulfill the function the
7 Plaintiffs proffer.

8 The notion of a federal court ordering state legislators to take a specific legislative action
9 raises concerns both with respect to federalism and separation of powers. *See, e.g.,*
10 *M.S. v. Brown*, 902 F.3d 1076, 1087 (9th Cir. 2018) (“[w]e are not aware of any decision
11 extending this power in Federal Courts to order Congress to enact legislation. To do so
12 would constitute encroachment upon the functions of a legislative body and would violate the
13 time-honored principle of separation of powers of the three great departments of our
14 Government. This principle is equally applicable to the power of a Federal Judge to order a state
15 legislative body to enact legislation. The enactment of legislation is not a ministerial function
16 subject to control by mandamus, prohibition or the injunctive powers of a court”). Of course, the
17 Washington Legislature may reconvene the commission, after it ceases to exist on July 1, 2022,
18 if two thirds of its membership vote to do so, but neither does it require an order of this Court to
19 do nor is such an order appropriate.

20 In addition, the Washington Legislature is no longer in session. At present, therefore,
21 neither Speaker Jinkins nor Senator Billig—nor any other legislator—may seek a vote to
22 reconvene the Commission without the Legislature first returning to session. The next regular
23 legislative session is scheduled for January 2023. Wash. Const. art. II, § 12(1). The Legislature
24 may return in a special session either upon proclamation of the Governor or by a two-thirds vote
25 of each house of the Legislature. Wash. Const., art II, § 12(2). Under the Joint Rules of the Senate
26 and House of Representatives Sixty-Seventh Legislature, Rule 29 (enacted as House Concurrent

1 Resolution 4400 (2021)),¹ the Legislature may call itself into a special session by resolution.²
 2 But the authority to place a resolution before the Legislature to convene a special session is
 3 vested in the Rules Committees of the House and the Senate, and not in Speaker Jinkins or
 4 Senator Billig. Joint Rule 29(2).

5 Therefore reconvening the Commission after it ceases to exist on July 1, 2022, would
 6 take either a proclamation of the Governor or a vote of each body's Rules Committee, followed
 7 by a two-thirds legislative vote to reconvene the Commission. The relief Plaintiffs suggest
 8 cannot be had by this Court simply ordering Speaker Jinkins or Senator Billig to request a vote
 9 in their respective chambers.

10 The second way to extend the Commission's term is by order of the Washington Supreme
 11 Court. RCW 44.05.110(2). There is no reason why Speaker Jinkins or Secretary Billig would be
 12 necessary parties for seeking this route to extending the Commission's term. Indeed, anybody
 13 could petition the Washington Supreme Court for such an order.

14 Plaintiffs accordingly fail to demonstrate why their Complaint seeks any relief against
 15 Speaker Jinkins or Senator Billig. There is presently no need for any legislative action to
 16 reconvene the Commission, because it still exists until July 1, 2022. Even after that date, a
 17 legislative action to reconvene the Commission is not a result that Speaker Jinkins or Senator
 18 Billig may affect, because it takes a two-thirds vote of the Legislature to reconvene the
 19 Commission. And even the Legislature as a body presently lacks the capacity to do so unless or
 20 until it is called back into special session either by the Governor or by a two-thirds legislative

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 23 ¹ See HCR 4400, 67th Legislature, 2021 Regular Session, available at
<https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/House%20Passed%20Legislature/4400.PL.pdf?q>
 (last visited Mar 18, 2022).

24 ² See SB 5196 – 2021–22, 67th Legislature, 2021 Regular Session, available at:
<https://app.leg.wa.gov/billsummary?BillNumber=5196&Year=2021&Initiative=false> (last visited Mar. 18, 2022)
 25 (describing how the legislature may convene a special session). That bill currently awaits the Governor's signature,
 26 but if signed into law it will not take effect until 90 days after the adjournment of the Legislature's 2022 session.
 Wash. Const. art. II, § 1(c).

1 vote, an action placed before it by the Rules Committees of each chamber. And the
2 Commission's term could also be extended by order of the Washington Supreme Court.

3 Plaintiffs accordingly state no claim against Speaker Jinkins or Senator Billig on which
4 relief could be granted.

5 **C. Declaratory or Injunctive Relief Would Sufficiently Catalyze Remedial Action No
6 Matter Who the Parties Are**

7 Defendant Hobbs will remain a party to this action no matter the result of this motion.
8 Secretary Hobbs is the state's chief elections officer. RCW 29A.04.230. If Plaintiffs were to
9 convince this Court to enjoin Secretary Hobbs from conducting legislative elections using the
10 current redistricting plan, that injunction would constitute the essential remedy Plaintiffs seek.
11 And of course, if the Court denies such a request, the matter of a remedy would not arise. If, as
12 Plaintiffs suggest, the Court entered an injunction but permitted the enactment of a modified set
13 of district boundaries before imposing its own, that action would motivate any state effort just
14 as effectively no matter whether Speaker Jinkins and Senator Billig are parties to this case or
15 not.

16 As noted, the Commission remains in existence until July 1, 2022. RCW 44.05.110. Until
17 that date arrives, no legislative action to reconvene the commission or order of the Washington
18 Supreme Court to extend its term is needed. The Commission could simply meet. But even if it
19 became necessary, the Governor or the Rules Committees of each legislative chamber would
20 remain able to call the Legislature into special session to reconvene the Commission (if approved
21 by a two-thirds vote of each chamber). Wash. Const. art. II, § 12(2); Joint Rule 29. Besides, any
22 party with standing could petition the Washington Supreme Court to extend the Commission's
23 term. RCW 44.05.110(2).

24 This point highlights the problematic nature of the procedural posture of this case. As
25 Secretary Hobbs notes in response to this motion, this case currently lacks a proper party to
26 defend the redistricting plan on its merits. Defendant Secretary of State Steven Hobbs' Response

1 to Defendants Jinkins’s and Billig’s Motion to Dismiss at 1. Secretary Hobbs further suggests
2 the State itself as a proper party, a suggestion that Speaker Jinkins and Senator Billig endorse.³
3 Secretary Hobbs has stated his own position in this matter, and Speaker Jinkins
4 and Senator Billig have moved to dismiss. Something remains lacking in the posture of this
5 case—true adversity of interests between Plaintiffs and Defendants. But that circumstance does
6 not render Speaker Jinkins and Senator Billig proper parties to this action, and this Court should
7 grant their Motion to Dismiss.

8 **III. CONCLUSION**

9 For these reasons, Senator Billig and Speaker Jinkins respectfully request that this Court
10 GRANT their Motion to Dismiss, dismissing them as parties to this action.

11 DATED this 18th day of March, 2022.

12 ROBERT W. FERGUSON
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14 /s/ Jeffrey T. Even

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25 ³ Although the Attorney General has broad authority to represent the State in litigation, the undersigned
26 counsel do not represent the State in this matter. *See City of Seattle v. McKenna*, 171 Wn.2d 551, 562, 259 P.3d
1087 (2011) (the Attorney General has broad discretionary authority to participate in litigation on behalf of the
State). Counsel’s role in this action is to represent only Speaker Jinkins and Senator Billig, and counsel accordingly
lack the authority to commit the Attorney General to any course of action with respect to the State or any other
agency thereof.

As noted in Jinkins’s and Billig’s original motion, a denial of this motion to dismiss might also lead other
legislative leadership to seek participation.

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.

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 18th day of March 2022, at Olympia, Washington.

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