

1 redistricting plan. Accordingly, Secretary Hobbs brings this motion to join the Redistricting
 2 Commission, members of the Redistricting Commission in their official capacities, and/or the
 3 State of Washington.

4 II. BACKGROUND

5 Plaintiffs filed their complaint in this matter on January 19, 2022. The Complaint alleges
 6 that the state legislative redistricting plan (specifically Legislative District 15) approved by the
 7 Redistricting Commission in November 2021, violates Section 2 of the Voting Rights Act.
 8 Dkt. # 1, ¶¶ 274-83. The complaint identifies only three defendants: Secretary of State Steven
 9 Hobbs, Speaker of the House Laurie Jinkins, and Senator Andy Billig, each in their official
 10 capacity. Dkt. # 1, ¶¶ 59-61. On February 25, 2022, Secretary Hobbs filed a notice informing the
 11 Court that he intends to take no position on the issue of whether the plan adopted by the
 12 Redistricting Commission violates Section 2 of the Voting Rights Act. Dkt. # 40. Speaker Jinkins
 13 and Senator Billig have made clear that they do not believe they are proper defendants, Dkt. # 37
 14 at p. 1, and that they are not in a position to support or oppose Plaintiffs' claims, Dkt. # 49 at p. 9.
 15 Their motion to dismiss is pending. Dkt. # 37.

16 To date, Plaintiffs have not amended their complaint, nor has any party sought leave to
 17 intervene. Separately, a private party has filed a lawsuit challenging the Redistricting
 18 Commission's state legislative plan on the basis that its consideration of race in adopting
 19 Legislative District 15 violated the Equal Protection Clause. *Garcia v. Hobbs*, No. 3:22-cv-5152,
 20 Dkt. # 1 at ¶¶ 72-75.

21 III. ARGUMENT

22 A. Legal Standard Under Fed. R. Civ. P. 19

23 There are three elements to determining whether a person is a required party. First, the
 24 person must be "subject to service of process[.]" Fed. R. Civ. P. 19(a)(1). Second, the person's
 25 joinder must "not deprive the court of subject-matter jurisdiction[.]" *Id.* Third, one of two
 26 alternatives must apply. The first alternative is that "in that person's absence, the court cannot

1 accord complete relief among the existing parties.” Fed. R. Civ. P. 19(a)(1)(A). The second
2 alternative is that the “person claims an interest relating to the subject of the action and is so
3 situated that disposing of the action in the person’s absence may: (i) as a practical matter impair
4 or impede the person’s ability to protect the interest; or (ii) leave an existing party subject to a
5 substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of
6 the interest.” Fed. R. Civ. P. 19(a)(1)(B). “There is no precise formula for determining whether
7 a particular nonparty should be joined under Rule 19(a) The determination is heavily
8 influenced by the facts and circumstances of each case.” *Equal Emp. Opportunity Comm’n v.*
9 *Peabody W. Coal Co.*, 610 F.3d 1070, 1081 (9th Cir. 2010) (ellipses in original) (quoting *N.*
10 *Alaska Env’t Ctr. v. Hodel*, 803 F.2d 466, 468 (9th Cir. 1986)).

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

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

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

23 Joinder of the Redistricting Commission and/or its members also would not deprive this
24 Court of subject matter jurisdiction. This Court’s subject matter jurisdiction is based on the
25 existence of a federal question, and joinder would not affect that.
26

1 Both prongs of the third joinder element are satisfied as to at least some of the members.
2 In the absence of the Redistricting Commission and/or its members, this Court cannot accord
3 complete relief among the existing parties. Plaintiffs request that this Court “[o]rder the
4 implementation and use of a valid state legislative plan” that complies with Section 2 of the
5 Voting Rights Act. Dkt. # 1 at p. 42. Under the Washington Constitution, only the Redistricting
6 Commission has the authority, in the first instance, to adopt or revise the state legislative plan.
7 Wash. Const. art. II, §§ 43(6), (8). The current defendants in this case have no such authority,
8 nor do they have authority to compel the Redistricting Commission to comply with an order of
9 this Court. Accordingly, an order from this Court could not accord complete relief to Plaintiffs
10 if they establish a violation of the Voting Rights Act.

11 In addition, at least two members of the Redistricting Commission had claimed an interest
12 relating to the subject of this action. Specifically, commissioners Paul Graves and Joe Fain
13 voted in favor of the Redistricting Commission intervening in the present litigation.
14 Wash. State Redistricting Comm’n (March 7, 2022), at 15:42-15:50, *video recording by*
15 *TVW, Washington State’s Public Affairs Network*, [https://tvw.org/video/washington-state-](https://tvw.org/video/washington-state-redistricting-commission-2022031203/?eventID=2022031203)
16 [redistricting-commission-2022031203/?eventID=2022031203](https://tvw.org/video/washington-state-redistricting-commission-2022031203/?eventID=2022031203). Commissioner Graves stated
17 that it struck him that “it would be a grave wrong for the Commission not even to present our
18 arguments to the court.” *Id.* at 6:11-6:15. As a practical matter, conducting this litigation in the
19 absence of the members of the Redistricting Commission impairs or impedes their ability to
20 protect their interest in ensuring that the work of the Redistricting Commission is fully defended
21 through the adversarial process.

22 Joining the Redistricting Commission is consistent with cases related to whether a state
23 legislature is a necessary party. In *Hellebust v. Brownback*, 42 F.3d 1331, 1335 (10th Cir. 1994),
24 the Tenth Circuit held that the state legislature was not a necessary party because the injury
25 complained of was the unconstitutional exercise of power by the board of agriculture. *Id.* at 1335.
26 That makes sense where the remedy was simply to prevent a state board from conducting further

1 business until a new election method is adopted. But plaintiffs here request more than an
2 injunction against using the Commission’s state legislative maps. Plaintiffs here request that this
3 Court order the implementation of new maps, a responsibility the Washington Constitution vests
4 in the Redistricting Commission. Wash. Const. art. II, § 43(6). This materially distinguishes
5 *Hellebust*.

6 *Dickinson v. Indiana State Election Board*, 933 F.2d 497 (6th Cir. 1991), a Voting Rights
7 Act redistricting challenge, is also distinguishable because there, the district had joined three
8 candidates under Rule 19(a)(2) who defended the existing districts when the originally named
9 defendants would not. *Id.* Under those circumstances, where the parties before the Court ensured
10 adversity, the Sixth Circuit held that the state legislature, which had the power of apportionment,
11 was not a necessary party. *Id.* at 500. In fact, the Sixth Circuit expressly noted that “[a] potential
12 problem could arise if the [district] court believed that the legislature’s interests were not
13 adequately represented” and that the remedy would be for the district court “to ensure that any
14 unrepresented interests are properly represented through joinder.” *Id.* 501 n.3. Secretary Hobbs
15 requests the precise remedy recommended in *Dickinson*—joinder of the entity responsible for
16 adopting or amending a redistricting plan.

17 Joinder of the Redistricting Commission and/or the commissioners in their official
18 capacities is feasible. Though the Redistricting Commission is an arm of the State of
19 Washington, sovereign immunity does not appear to bar a Voting Rights Act claim. While the
20 Ninth Circuit has not addressed the issue, the weight of authority suggests that the Voting Rights
21 Act abrogates state sovereign immunity. *E.g.*, *OCA-Greater Houston v. Texas*, 867 F.3d 604,
22 614 (5th Cir. 2017) (“The VRA, which Congress passed pursuant to its Fifteenth Amendment
23 enforcement power, validly abrogated state sovereign immunity.”); *Mixon v. State of Ohio*, 193
24 F.3d 389, 399 (6th Cir. 1999) (concluding Congress validly abrogated state sovereign immunity
25 in adopting the VRA); *Ga. State Conference of NAACP v. State*, 269 F. Supp. 3d 1266, 1275
26 (N.D. Ga. 2017) (concluding that “Section 2 effects a valid abrogation of state sovereign

1 immunity”). *But see, e.g., N.C. State Conference of NAACP v. Cooper*, 397 F. Supp. 3d 786,
 2 799-800 (M.D.N.C. 2019) (declining to follow *Mixon* and concluding that sovereign immunity
 3 bared VRA claim).¹ Even if sovereign immunity did apply, it may be waived. *Hill v. Blind Indus.*
 4 *& Servs. of Md.*, 179 F.3d 754, 760-63 (9th Cir. 1999), *as amended by* 201 F.3d 1186. Further,
 5 an order directing prospective relief against the commissioners, in their official capacities, would
 6 be permissible under *Ex Parte Young*, 209 U.S. 123 (1908).

7 The Secretary acknowledges that there is one potential barrier to the Redistricting
 8 Commission’s participation in this proceeding. Under Wash. Rev. Code § 44.05.110(2), the
 9 Redistricting Commission “shall cease to exist on July 1st of each year ending in two unless the
 10 [Washington] supreme court extends the commission’s term.” That is not, however, a barrier to
 11 feasibility of joinder at this time. And the Secretary would not interfere with an extension of the
 12 Commission’s term by the Washington Supreme Court.

13 **C. The State of Washington is a Required Party**

14 Another solution to the current lack of adversity would be to order the joinder of the State
 15 of Washington. The Washington Constitution creates a unique process for redistricting, relying
 16 on the leadership of the two largest political parties in each house of the Washington Legislature
 17 to appoint commissioners who serve on a temporary body. Wash. Const. art. II, § 43(2). That
 18 body is responsible for adopting a redistricting plan. *Id.* at § 43(6). The Washington Legislature
 19 may make only minor amendments; if the Legislature does not act, the Washington Constitution
 20 provides that the Redistricting Commission’s plan “constitutes the state districting law.” *Id.* at
 21 § 43(7). Implementation of that law is the shared responsibility of the Secretary and county
 22 election officials. Wash. Rev. Code §§ 29A.04.216, .230. The multiple actors and interwoven
 23 responsibilities create procedural complications. Ordering the joinder of the State of Washington
 24 would cut the Gordian knot.

25 _____
 26 ¹ The Secretary is not aware of any federal Circuit Court of Appeals rejecting the conclusion that the VRA
 abrogates state sovereign immunity.

1 Like the Redistricting Commission, the State of Washington is subject to service of
 2 process and its presence would not deprive the Court of subject-matter jurisdiction. The State's
 3 participation would also remedy the above-discussed limitations on this Court's ability to accord
 4 complete relief among the existing parties. Further, the State of Washington would certainly
 5 seem to have an interest in defending a redistricting plan that was duly adopted pursuant to the
 6 process set forth in its state constitution. And joinder of the State of Washington is feasible for
 7 the same reason discussed above in the context of the Commission.

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

11 IV. CONCLUSION

12 Secretary Hobbs respectfully requests that this Court order joinder, pursuant to
 13 Rule 19(a)(2), of the Redistricting Commission, its members, and/or the State of Washington.
 14 This can be accomplished by ordering Plaintiffs to file an amended complaint, *see AIG Property*
 15 *Casualty Co. v. Green*, 172 F. Supp. 3d 468, 477 (D. Mass. 2016), or by other means. Secretary
 16 Hobbs does not seek changes to the dates established in the Court's Minute Order Setting Trial
 17 Dates and Related Dates (Dkt. # 46).

18 RESPECTFULLY SUBMITTED this 24th day of March, 2022.

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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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