

The Honorable Robert S. Lasnik

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

SUSAN SOTO PALMER, et al.,	
	Plaintiffs,
v.	
STEVEN HOBBS, et al.,	
	Defendants.
JOSE TREVINO, et al.	
	Intervenor-Defendants.

NO. 3:22-cv-05035-RSL
TRIAL BRIEF OF DEFENDANT
STEVE HOBBS

Defendant Secretary of State Steve Hobbs takes no position on the merits of Plaintiffs’ claims. Secretary Hobbs had no role in designing the legislative redistricting plan that Plaintiffs 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).

While the Secretary has no position on the ultimate merits of this case or any particular elements, this Court should not enter any findings related to the use of signature matching to

1 verify the identity of voters. The expert report of Dr. Josué Q. Estrada addresses the totality of
2 the circumstances related to participation in the political process by Latino voters in the Yakima
3 Valley and Pasco areas. In particular, Dr. Estrada addresses six of the “Senate Factors.” In
4 addressing Senate Factor 3, Dr. Estrada relies on alleged “disproportionate signature rejections.”
5 Dr. Estrada’s report does not reflect that he conducted any independent analysis. Instead,
6 Dr. Estrada cites an article on the website Crosscut, which in turn refers to a study conducted by
7 another organization. Dr. Estrada’s report does not even indicate that he personally reviewed the
8 underlying analysis. Dr. Estrada’s report does not reflect whether the presented double-hearsay
9 statistics control for factors other than race, such as the voter’s age or whether the voter is a first-
10 time voter. In short, Dr. Estrada’s report does not provide a sufficient basis to justify a finding
11 that the signature verification process in Washington discriminates against Latino voters. As Dr.
12 Estrada’s report correctly notes, the issue of whether the application of signature verification in
13 certain counties has discriminated based on race is the subject of ongoing litigation in *Reyes v.*
14 *Chilton*, No. 4:21-cv-5075 (E.D. Wash.). The record in *Reyes* will be more fully developed, and
15 it would be inappropriate to adopt a finding on the dramatically more limited record here.

16 To be clear, the Secretary’s position is a narrow one. While this Court should not make
17 any findings related to whether the signature verification process has been applied in a
18 discriminatory manner in the region, the Secretary has no position on the larger issue of whether
19 Senate Factor 3 supports Plaintiffs, much less whether the totality of the circumstances favors
20 Plaintiffs.

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

24 First, if Plaintiffs prevails, any remedy should not interfere the ability of election officials
25 to meet election deadlines. *See Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam). “This Court
26 has repeatedly stated that federal courts ordinarily should not enjoin a state’s election laws in the

1 period close to an election, and this Court in turn has often stayed lower federal court injunctions
2 that contravened that principle.” *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J.,
3 concurring in grant of application for stays). In this case, the parties’ Proposed Pretrial Order
4 contains an agreed fact that “March 25, 2024 is the latest date a finalized legislative district map
5 must be transmitted to counties without significantly disrupting the 2024 election cycle.”
6 Dkt. 64 at 12 (¶ 85); *see also* Dkt. 179 at 2-6 (declaration of Director of Elections Stuart Holmes
7 discussing deadlines). Any remedy should avoid requiring implementation of new legislative
8 maps for purposes on the 2024 elections unless the maps are finalized and transmitted to counties
9 by March 25, 2024.

10 Second, if Plaintiffs prevail, fees and costs should not be awarded against Secretary
11 Hobbs. At least in certain situations, attorneys’ fees and costs under 52 U.S.C. § 10310(e) and
12 42 U.S.C. § 1988 are not available against “‘blameless’” defendants who are “‘not charged with
13 any wrongdoing.” *Brat v. Personhuballah*, 883 F.3d 475, 476, 481-82, 484 (4th Cir. 2018)
14 (quoting *Indep. Fed’n of Flight Attendants v. Zipes*, 491 U.S. 754, 762 (1989)); *see also Costco*
15 *Wholesale Corp. v. Hoen*, 538 F.3d 1128, 1133 (9th Cir. 2008) (recognizing that the *Zipes* rule
16 extends to 42 U.S.C. § 1988). The policies underlying the fee-shifting statutes are (1) “‘that
17 wrongdoers make whole those whom they have injured,’” and (2) “‘detering’” unlawful
18 behavior. *Brat*, 883 F.3d at 481 (quoting *Zipes*, 491 U.S. at 762). While the Secretary is not an
19 intervenor, as was the case in *Zipes* and *Brat*, the policies apply with equal force here. The
20 Secretary is not responsible for the alleged wrong at issue in this case. The Secretary did not
21 design the challenged legislative district and does not have authority to alter it; the Secretary’s
22 implementation of the legislative district is in pursuit of the Secretary’s ministerial duties. As a
23 result, an award against the Secretary—who has taken no position and been no barrier to
24 Plaintiffs in this case—would not advance a policy of deterrence.

25 Even if attorneys’ fees are not precluded as a matter of law, this Court has discretion, *see*
26 42 U.S.C. § 1988(b) (the court, “in its discretion, may allow . . . a reasonable attorney’s fee”);

1 52 U.S.C. 10310(e) (same), and the circumstances of this litigation counsel strongly against an
2 award of fees or costs against the Secretary. In addition to the policies addressed in the previous
3 paragraph, it also bears noting that Plaintiffs would not be without the opportunity to seek fees;
4 fees may still be available against the State.

5 RESPECTFULLY SUBMITTED this 31st day of May, 2023.

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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.

DATED this 16th day of February 2023, at Olympia, Washington.

s/ Leena Vanderwood
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