

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN SOTO PALMER, et al.,

Plaintiffs,

v.

STEVEN HOBBS, et al.,

Defendants,

and

JOSE TREVINO, et al.

Intervenor-Defendants.

NO. 3:22-cv-05035-RSL

CLOSING STATEMENT OF
DEFENDANT STEVE HOBBS

BENANCIO GARCIA III,

Plaintiffs,

v.

STEVE HOBBS, et. al.

Defendants.

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

Defendant Secretary of State Steve Hobbs continues to take no position on whether the *Soto Palmer* plaintiffs have established a violation of a Voting Rights Act (VRA) or on whether the *Garcia* plaintiff has established a violation of the Fourteenth Amendment. Secretary Hobbs addresses only two issues in this statement: (1) allegations of racial disproportionality in the

1 signature verification process, and (2) the appropriate remedy if this Court invalidates existing
2 legislative district maps.

3 This Court should decline to make any findings related to allegations that the signature
4 verification process disproportionately affects Latino¹ voters. The evidence does not support
5 such a finding, and such a finding is not necessary to resolution of the case, regardless of the
6 ultimate outcome. The topic of signature verification came up only in a narrow way. With respect
7 to the *Soto Palmer* plaintiffs' VRA claim,² the expert report of Dr. Josué Estrada addressed six
8 of the "Senate Factors." Dkt 104-2 (Ex. B) at 7-8. With respect to one of those six factors (Factor
9 Three), Dr. Estrada addressed two topics: non-presidential-election-year elections for the state
10 senate position and alleged disproportionate signature rejection. *Id.* at 43-46. As Dr. Estrada
11 acknowledged at trial, his discussion of alleged disproportionate signature rejection is based on
12 a news article published on the website Crosscut.com, which reported on a study by a "non-
13 profit agency." *Id.* at 45-46; VRP (June 2, 2023) at 150:17-151:7. That study was not admitted
14 into evidence in this case, nor did Dr. Estrada testify that he personally reviewed the study itself.
15 Dr. Estrada also did not conduct an independent analysis. VRP (June 2, 2023) at 152:3-5. This
16 double hearsay in an expert report is scant evidence to justify a finding that the signature
17 verification process discriminates against Latino voters. The direct evidence from trial points in
18 the opposite direction. Susan Soto Palmer testified that she has voted in every election and did
19 not identify any signature verification issues. VRP (June 5, 2023) at 290:1-5. Gabriel Portugal
20 went even further, testifying that voting in Washington is "very easy" for him. VRP (June 7,
21 2023) at 840:18-20. In identifying barriers others in the Latino community had faced, signature
22 verification was conspicuously absent. VRP (June 7, 2023) at 840:21-841:14.

23
24

¹ In this filing, the Secretary uses the term "Latino" interchangeably with the use of "Hispanic" at trial.

25 ² This topic is also conceivably relevant to *Garcia* plaintiff's Fourteenth Amendment racial
26 gerrymandering claim, if the Court reaches the issue of whether the need to create a VRA district was a compelling
governmental interest. *See, e.g., Wisconsin Legislature v. Wisconsin Elections Comm'n*, 142 S. Ct. 1245, 1248
(2022) (per curiam) (reflecting longstanding assumption that VRA compliance can satisfy strict scrutiny).

1 The resolution of allegations about disproportionate signature rejection is better left to
 2 other pending lawsuits in which the issue is more squarely presented: *Reyes v. Chilton*, No. 4:21-
 3 cv-5075 (E.D. Wash.), an as-applied challenge to the signature verification process in three
 4 central Washington counties, and *Vet Voice Foundation v. Hobbs*, No. 22-2-19384-1 SEA
 5 (Wash. King Cnty. Super. Ct.), a facial challenge to the statute requiring signature verification.³
 6 Those lawsuits will have a more developed factual record on the topic.

7 A finding of fact related to an allegedly disproportionate impact of signature verification
 8 on Latino voters is also unnecessary. Such a finding is not necessary in order to rule in favor of
 9 any party. It is not necessary to rule in favor of *Soto Palmer* plaintiffs, as Dr. Estrada testified
 10 that, even without consideration of the allegedly disparate impact of the signature verification
 11 process, he would conclude that a totality of the circumstances analysis weighs in favor of the
 12 VRA requiring a majority Latino district. VRP (June 2, 2023) at 152:6-25. And such a finding
 13 is certainly not necessary to rule in favor of the State or the *Garcia* plaintiff.

14 On the question of the appropriate remedy, if the Court invalidates the existing legislative
 15 district map, the Secretary largely takes no position. The Secretary's one limited position on this
 16 issue is the Office of the Secretary of State is *not* the appropriate entity to create new maps. The
 17 Secretary's role, together with county elections officials, is to *administer* election maps, not to
 18 draw them. Further, pursuant to the Agreed Facts adopted by the parties, any new map must be
 19 final and transmitted to counties no later than March 25, 2024, if it is to be implemented for the
 20 2024 election cycle without significant disruption. *Soto Palmer*, Dkt. 191 at 20 (¶ 124); *Garcia*,
 21 Dkt. 64 at 12 (¶ 85); *see also Soto Palmer*, Dkt. 179 at 2-6 (declaration of Director of Elections
 22 Stuart Holmes discussing deadlines); *Garcia*, Dkt. 59 at 2-6 (same).

23 While the Secretary does not specifically advocate this proposal, there is an alternative
 24 to assigning responsibility to a single entity. This Court could enter an order providing the State
 25 of Washington an opportunity to adopt revised legislative districts pursuant to the process set

26 ³ This Court can take judicial notice of the existence of these cases pursuant to Fed. R. Evid. 201(b)(2).

1 forth the Washington Constitution and state statute. *See* Wash. Const. art. II, § 43(8); Wash. Rev.
2 Code § 44.05.120. By statute, that would require a reasonable period of time for the Governor
3 to call a special session and for the Legislature to re-convene the Commission, 60 days for the
4 reconvened commission to make revisions, and 30 days for the Washington Legislature to amend
5 the Commission’s modification. Wash. Rev. Code § 44.05.120(4)-(5). Simultaneously, the Court
6 could appoint a special master to create maps to be implemented if the State fails to adopt new
7 maps that could be transmitted to counties by March 25, 2024. This would require some nuance.
8 If the special master’s contingency maps are made public before the Commission has an
9 opportunity to adopt a revised map, the existence of those maps may unnecessarily skew
10 negotiations and prevent compromise. On the other hand, the special master’s proposed
11 contingency maps would have to be shared with elections officials sufficiently ahead of
12 March 25, 2024, to allow for any technical corrections that may be necessary.

13 RESPECTFULLY SUBMITTED this 12th day of July, 2023.

14 ROBERT W. FERGUSON
15 *Attorney General*

16 *s/ Karl D. Smith*
17 KARL D. SMITH, WSBA 41988
18 *Deputy Solicitor General*
19 KATE S. WORTHINGTON, WSBA 47556
20 *Assistant Attorney General*
21 1125 Washington Street SE
22 PO Box 40100
23 Olympia, WA 98504-0100
24 (360) 753-6200
25 Karl.Smith@atg.wa.gov
26 Kate.Worthington@atg.wa.gov
 Attorneys for Defendant Steven Hobbs

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 12th day of July 2023, at Olympia, Washington.

s/ Leena Vanderwood
Leena Vanderwood
Paralegal
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 753-6200
Leena.Vanderwood@atg.wa.gov

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