The Honorable Robert S. Lasnik
The Honorable David G. Estudillo
The Honorable Lawrence Van Dyke

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BENANCIO GARCIA III,, Plaintiff, v. STEVEN HOBBS, in his official capacity as Secretary of State of Washington, and STATE OF WASHINGTON, Defendants.	NO. 3:22-cv-5152-RSL DEFENDANT STATE OF WASHINGTON'S REPLY IN SUPPORT OF MOTION FOR INQUIRY CONCERNING POTENTIAL CONFLICTS OF INTEREST NOTE FOR MOTION CALENDAR: MARCH 3, 2023

The State respectfully submits this reply to the responses filed by the *Garcia* Plaintiff and the *Soto Palmer* Intervenor–Defendants (collectively Respondents) and by the *Soto Palmer* Plaintiffs.[1]

I. Reply to Respondents

Respondents raise essentially two sets of arguments. Neither justifies Respondents' insistence that the respective Courts' ignore their apparent conflicts of interest.

Respondents first argue that the State's motion is procedurally improper and that the State lacks standing to bring it. *Soto Palmer* Intervenors' Resp. (Dkt. #156) at 3–8;

[1] The State is concurrently filing this identical brief in both actions.

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Garcia Plaintiff's Resp. (Dkt. #32) at 3–8. *FMC Technologies* and *In re Cellcyte*—both cited in the State's Motion—provide a complete response. *See Soto Palmer* Dkt. #150 at 6; *Garcia* Dkt. #29 at 6 (citing *FMC Techs., Inc. v. Edwards*, 420 F. Supp. 2d 1153, 1157 (W.D. Wash. 2006) and *In re Cellcyte Genetic Corp. Sec. Litig.*, C08-47RSL, 2008 WL 5000156, at *1–2 (W.D. Wash. Nov. 20, 2008)).

FMC Technologies makes clear that the "Court has a *duty* to examine charges of conflict of interest." 420 F. Supp. 2d at 1157 (citing *Trone v. Smith*, 621 F.2d 994, 999 (9th Cir. 1980) and *U.S. for Use & Benefit of Lord Elec. Co., Inc. v. Titan Pac. Const. Corp.*, 637 F. Supp. 1556, 1560 (W.D. Wash. 1986)) (emphasis added); *see also Trone*, 621 F.2d at 999 ("The primary responsibility for controlling the conduct of lawyers practicing before the district court rests with that court."); *Gas-A-Tron of Ariz. v. Union Oil Co. of Cal.*, 534 F.2d 1322, 1324 (9th Cir. 1976) ("Whenever an allegation is made that an attorney has violated his . . . ethical responsibility, . . . [i]t is the duty of the district court to examine the charge, since it is that court which is authorized to supervise the conduct of the members of its bar.") (quotation omitted). Given this duty, Respondents' assertion that the Courts lack authority to hear a motion for inquiry falls flat. *Contra Soto Palmer* Intervenors' Resp. at 3–6; *Garcia* Plaintiffs' Resp. at 3–6.

The Court's inherent duty to protect its processes and the integrity of proceedings also does away with Respondents' standing argument, as both *FMC Technologies* and *Cellcyte* confirm. In *Cellcyte*, the Court rejected the argument that "only a current or former client has standing to challenge an attorney's representation of another party," explaining:

> The court in *FMC Technologies* noted that courts may consider non-client initiated disqualification challenges based on the courts' "inherent power to 'protect the integrity of their processes.'" [420 F. Supp. 2d] at 1156 (quoting *Colyer v. Smith*, 50 F. Supp. 2d 966, 970 (C.D. Cal.1999) . . .
>
> In this case, because the motion has merit . . . the Court has a "'plain duty to act.'" *FMC Technologies*, 420 F. Supp. 2d at 1157 (quoting *In re Yarn Processing Patent Validity Litig.*, 530 F.2d 83, 89 (5th Cir. 1976)). It must act to protect the integrity of the process and to protect the litigants. Accordingly, the Court considers [non-client's] motion to disqualify[.]

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In re Cellcyte, 2008 WL 5000156, at *1–2. Without acknowledging these cases, Respondents suggest that the typical standing inquiry does not apply here because the State has moved for a motion for inquiry but "has not moved for disqualification." *Soto Palmer* Intervenors' Resp. at 7; *Garcia* Plaintiffs' Resp. at 7. This is a meaningless distinction. The Court's authority to inquire into potential conflicts and consider disqualification stems from its inherent authority to control its own affairs; this authority does not rest on how the parties style their motions.

Respondents' second set of arguments consists primarily of accusations that the State's counsel acted in bad faith and misrepresented the evidence.[2] *Soto Palmer* Resp. at 3 n.2, 9–12. Respondents ignore nearly all of the relevant testimony and entirely fail to discuss the Rules of Professional Conduct discussed in the State's motion. They also fail to address the new ethical concern the *Soto Palmer* Plaintiffs have raised since the filing of the State's motion, namely, their decision to notice the deposition of *their own client*—Mr. Garcia—on behalf of their other clients—Intervenors. *See Soto Palmer* Dkt. #153 at 2 ("The unusual nature of Intervenor-Defendants' cross-notice of Mr. Garcia's deposition" raises "questions . . . (*e.g.*, who will defend Mr. Garcia's deposition when his counsel is deposing him on behalf of their other clients?)").

Respondents' only real substantive argument is their claim that there is no conflict because all of their clients "agree fundamentally that a race-blind map is appropriate." *Soto Palmer* Intervenors' Resp. at 10; *Garcia* Plaintiff's Resp. at 10. But in the same paragraph, they essentially admit the conflict, stating: "The *Palmer* Intervenors believe that the map should not be redrawn . . . *Garcia* Plaintiff believes that the map must be redrawn." *Id.* That is precisely the problem: whatever their agreements on other issues, their litigation goals are fundamentally opposed. This apparent conflict merits this Court's inquiry.

[2] Respondents' contentions that counsel for the State brought the instant motion for tactical reasons or bad faith are devoid of any factual support.

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II. Reply to *Soto Palmer* Plaintiffs

Soto Palmer Plaintiffs raise the difficult question of how Respondents' apparent conflict might affect the timing of trial. To reiterate its prior position, the State agrees that delaying trial for any significant amount of time risks prejudice to Plaintiffs. However, delay could also prejudice Mr. Garcia because he alleges he will be injured if the 2024 elections are carried out under the current map. *Soto Palmer* Plaintiffs' request to hold Mr. Garcia's claims in abeyance do not address this prejudice.[3] It also ignores the obvious efficiencies inherent in both sets of claims being heard together in a single proceeding. Accordingly, should the Court determine that Mr. Garcia's counsel is disqualified from this case, the State suggests that Mr. Garcia be given a limited time to find new counsel (e.g., two weeks), after which time the Courts can conduct a status hearing to determine next steps in these cases.

DATED this 1st day of March, 2023

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[3] Soto Palmer Plaintiffs appear to suggest that any prejudice to Mr. Garcia should be ignored because Mr. Garcia was allegedly part of a plot directed by Commissioner Graves to stymie Plaintiffs' lawsuit. But this insinuation rests on scant evidence, ignores Mr. Graves' contrary testimony (see, e.g., Soto Palmer Dkt. #127-3 at 285:7–287:6), and is in any event irrelevant to the instant motion.

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I certify that this memorandum contains 1072 words, in compliance with the Local Civil Rules.

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 1st day of March, 2023 at Seattle, Washington

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