

The Honorable Robert S. Lasnik

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN SOTO PALMER, et al.,

Plaintiffs,

v.

STEVEN HOBBS, in his official capacity as
Secretary of State of Washington, and the
STATE OF WASHINGTON,

Defendants,

and

JOSE TREVINO, ISMAEL G. CAMPOS, and
Representative ALEX YBARRA,

Intervenor-Defendants

No. 3:22-cv-5035-RSL

NON-PARTY COMMISSIONERS’
STATEMENT IN RESPONSE TO
COURT ORDER

INTRODUCTION

Non-parties former Washington State Redistricting Commissioners April Sims, Joe Fain, Brady Walkinshaw, and Paul Graves (“Commissioners”) file this statement with the Court regarding their availability for trial to assure the Court that they have not absented themselves during trial. The Commissioners have reviewed the Court’s May 2, 2023 Order Expediting Briefing Regarding Motion for Clarification and the Plaintiffs’ Motion for Clarification. The Commissioners are available for trial and have been cooperative with the parties in this litigation.

NON-PARTY COMMISSIONERS’ STATEMENT IN RESPONSE TO COURT ORDER

CASE NUMBER 3:22-CV-5035-RSL - 1

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1 The Commissioners first learned on April 21, 2023 that they would be called as witnesses the week
 2 of June 5. This information was received during a telephone conversation with State’s counsel,
 3 not Plaintiffs’ counsel. The Commissioners subsequently provided their availability to all counsel
 4 and at no point ever took steps to absent themselves from this District.

5 The Commissioners understand that no party represents their views before the Court and,
 6 in fact, that Plaintiffs have litigation reasons to cast the Commissioners in a poor light.
 7 Accordingly, they are filing this statement to ensure their availability is not misconstrued.

8 STATEMENT

9 On April 21, 2023, the State’s counsel called the Commissioners’ counsel to state that the
 10 four voting Commissioners would be called as witnesses during trial. Declaration of Aaron E.
 11 Millstein in Support of Non-Party Commissioners’ Statement in Response to Court Order
 12 (“Millstein Decl.”), ¶2. The State’s counsel indicated during the call that trial was scheduled for
 13 two weeks and requested the Commissioners’ availability. *Id.* Based on this information, that trial
 14 started June 5 and lasted two weeks, the Commissioners’ counsel requested availability from the
 15 four voting Commissioners. *Id.* ¶3. The Commissioners responded with their availability based
 16 on the understanding that trial was scheduled for two weeks:

- 17 • Commissioner Graves was available June 5, 7 (until 3pm), 8, 13, 14, and 15.
- 18 • Commissioner Sims was traveling June 6-12 and again from June 14-15 in pre-
 19 planned trips out of state.
- 20 • Commissioner Fain informed counsel that he had an annual work event June 8 and
 21 that testifying during the second week of trial would be best for availability.
- 22 • Commissioner Walkinshaw informed counsel that he planned to be in Mexico City
 23 the month of June and inquired about remote testimony if possible.

24 *Id.* The Commissioners’ counsel informed the State’s counsel regarding the above availability. *Id.*

25 ¶4. Plaintiffs’ counsel then called the Commissioners’ counsel to discuss the Commissioners’
 26 availability, stating that there appeared to be a disagreement between the parties regarding the

NON-PARTY COMMISSIONERS’ STATEMENT IN RESPONSE TO COURT ORDER

1 length of the trial and that Plaintiffs may seek clarification from the Court. *Id.* ¶5. During this
2 call, the Commissioners’ counsel provided the above availability of the Commissioners, stating
3 that it was possible Commissioner Walkinshaw could be available the week of June 5 in person
4 and that he was awaiting confirmation on whether Commissioner Sims could be available on either
5 June 5 or June 13. *Id.* Additionally, the Commissioners’ counsel requested whether virtual
6 testimony would be an option to address any potential unavailability issues. *Id.* As part of this
7 conversation, the Commissioners’ counsel stated that the above availability was based on
8 understanding the trial was two weeks and asked to be informed if the trial was in-fact only one
9 week. *Id.* The Commissioners’ counsel specifically informed Plaintiffs’ counsel that the reason
10 Commissioners did not have more availability was because no party had informed the
11 Commissioners they would be called as witnesses the week of June 5. *Id.* ¶ 6.¹

12 After this call, the Commissioners’ counsel contacted the Commissioners again to
13 determine whether they had additional availability in the event trial was just the week of June 5.
14 *Id.* ¶ 7. Before being able to provide updated availability to the parties, Plaintiffs filed their Motion
15 for Clarification. *Id.* In their motion, Plaintiffs accurately conveyed the availability they were
16 informed of but inexplicitly informed the Court that they “do not understand why the
17 Commissioners have decided to plan international travel during the trial setting.” Mot. for
18 Clarification at 4. The reason the Commissioners did not have greater availability is because no
19 party informed the Commissioners they would be called as witnesses the week of June 5 (or that
20 trial was only one week). Millstein Decl., ¶ 6. It is the parties’ responsibility to inform witnesses
21 they will be called at trial; it is not the responsibility of a non-party to unilaterally determine how
22 a party intends to litigate their case.

23 Relying on Plaintiffs’ representations in their motion, the Court entered its May 2, 2023
24 order stating that “Plaintiffs have been notified that three of the five Commissioners have

25 _____
26 ¹ At some point after this call, the State’s counsel clarified that trial was only one week and not two.

1 scheduled international trips during [the week of June 5]” Order at 2. Further, the Court’s
2 order goes on to state that “the Commissioners’ decision to absent themselves from the district
3 during the scheduled trial is troubling.” *Id.* After Plaintiffs’ counsel declined the Commissioners’
4 request to provide this Court with the additional information necessary to have an accurate
5 understanding of counsels’ communications (see additional details below), the Commissioners
6 chose to file this statement with the Court to ensure there is no misunderstanding regarding the
7 Commissioners’ availability.

8 The Commissioners want to assure the Court that they have not undertaken any efforts to
9 be unavailable during trial. They were simply scheduling their routine travel plans without the
10 benefit of knowing that the parties intended to call them to testify the week of June 5. Upon being
11 informed that trial would be only one week, they have revised their plans to make themselves
12 available to the degree they are able.

13 Accordingly, the Commissioners are available during the following periods of time the
14 week of June 5:

- 15 • Commissioner Graves is available June 5, 7 (until 3pm), 8.
- 16 • Commissioner Sims is available June 5. Her travel starting on June 6 was planned
17 in 2022 before the trial date was moved to June 5.
- 18 • Commissioner Fain is available June 5, 6, or 9, with a request to be called on June
19 9 given his work event on June 8.
- 20 • Commissioner Walkinshaw is available June 5-9, with a request of being called
21 earlier in the week.

22 This updated availability was conveyed to the parties last week via email and during a
23 video conference. Millstein Decl., ¶ 8-9. The Commissioners’ counsel also requested that
24 Plaintiffs clarify with the Court that three of the Commissioners were not traveling internationally
25 and that the reason initial availability was problematic was because the parties had not informed
26 the Commissioners that they would be called as witnesses the week of June 5. *Id.* ¶ 9. A copy of
NON-PARTY COMMISSIONERS’ STATEMENT IN RESPONSE TO COURT ORDER

1 the email exchange between the parties is attached here for the Court's convenience. *Id.* ¶ 8, Ex.
2 A.

3 The Commissioners want to ensure the Court is aware they are making themselves as
4 available as possible and that they have not undertaken any efforts to absent themselves from the
5 district during the week of trial.

6 DATED this 9th day of May, 2023

7 K&L GATES LLP

8
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