

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, ISMAEL CAMPOS,
and ALEX YBARRA,

Intervenor-Defendants.

Case No.: 3:22-cv-05035-RSL

Judge: Robert S. Lasnik

**PLAINTIFFS’ MOTION FOR
CLARIFICATION
REGARDING TRIAL
SCHEDULE**

NOTE FOR MOTION
CALENDAR: May 19, 2023

Plaintiffs respectfully request clarification and potential relief regarding the trial setting in this matter. The *Soto Palmer* Plaintiffs’ case was originally set for a 5-7 day trial, first on January 9, 2023, and second on May 1, 2023. Dkt. 46 & 93. On January 20, 2023, the Court ordered that the *Soto Palmer* and *Garcia* cases would be set for a consolidated trial (with only Judge Lasnik ruling in the *Soto Palmer* case and the three-judge court ruling in the *Garcia* case). Dkt. 136. The Court entered an order setting the *Soto Palmer* case for a 5 day trial commencing June 5, 2023. Dkt. 137. The Court did not enter an order altering the trial setting in the *Garcia* case, which had been set for a 4-5 day trial commencing June 5, 2023. *Garcia v. Hobbs*, 22-cv-5152, Dkt. 27.

1 There is confusion as to how many days (and which days) trial will now occur in this case.
2 Counsel for the State and counsel for the Commissioners have indicated that it was their impression
3 that the Court was allocating 10 days of trial time (5 for each of *Soto Palmer* and *Garcia*).
4 Moreover, the *Soto Palmer* Plaintiffs have also just now been informed that three of the
5 Redistricting Commission’s commissioners—key witnesses to their Section 2 discriminatory
6 *intent* claim—have scheduled international trips during the week of June 5 or are otherwise
7 unavailable. Plaintiffs thus file this motion for clarification and for relief regarding the trial setting.
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9 The original setting of 5-7 days of trial time for just the *Soto Palmer* case is a sufficient
10 amount of time for the *Soto Palmer* Plaintiffs to adequately present their case for their two
11 claims—(1) discriminatory results under Section 2 of the VRA and (2) discriminatory intent under
12 Section 2 of the VRA. The latter claim is particularly exhibit and witness intensive, and its legal
13 standard and evidentiary contours vary from both a discriminatory results Section 2 claim and from
14 the racial gerrymandering claim at issue in *Garcia*.¹
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17 ¹ For example, where discriminatory *intent* is proven, the required showing for a corresponding
18 discriminatory result lessens compared to what is required when only discriminatory results are
19 alleged. *See, e.g., Bartlett v. Strickland*, 556 U.S. 1, 20 (2009) (plurality) (declining to require
20 showing of possible majority-minority district under *Gingles* prong 1 in context of intentional
21 discrimination showing); *Garza v. County of Los Angeles*, 918 F.2d 763, 769 (9th Cir. 1990)
22 (holding that intentional discrimination showing under Section 2 obviates need to prove potential
23 majority-minority district under *Gingles* prong 1). Likewise, the *Garcia* Plaintiffs must prove that
24 race predominated in the drawing of LD15—regardless of whether that racial predominance was
25 well- or ill-motivated. *See, e.g., Cooper v. Harris*, 581 U.S. 285, 291 (2017). By contrast, the *Soto*
26 *Palmer* Plaintiffs’ Section 2 intentional discrimination claim requires proof that a purpose of the
mapdrawing was to dilute Latino voting strength, but does not require a showing that this
discriminatory purpose was the predominant one. *See, e.g., Vill. of Arlington Heights v.*
Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977) (holding that intentional
discrimination is unlawful if it is “a motivating factor”); *Veasey v. Abbott*, 830 F.3d 216, 230 (5th
Cir. 2016) (en banc) (“[R]acial discrimination need only be one purpose, and not even a primary
purpose” to be unlawful). These differences matter in terms of the evidentiary focus and
presentation.

1 If the Court’s intent in consolidating trial was to provide just 5 trial days to hear both the
2 *Soto Palmer* and the *Garcia* cases, that will not be enough time for the *Soto Palmer* Plaintiffs to
3 adequately present both their Section 2 results and intent claims. Counsel for
4 Intervenor/Defendants and Mr. Garcia have indicated that they expect to be allocated equal trial
5 time. If the *Soto Palmer* Plaintiffs, the Intervenor/Defendant/*Garcia* parties, and the State are
6 allocated equal shares of 5 days, that leaves just 1.6 days for the *Soto Palmer* Plaintiffs to present
7 their expert and fact witnesses (and cross examine Defendants’ witnesses) on two legal claims—
8 with the intent claim requiring a host of witnesses and hundreds of underlying exhibits that are not
9 required for just the Section 2 results claim. Plaintiffs’ counsel are unaware of a another Section 2
10 results *and* intent case in which plaintiffs have been provided such limited time to prove these
11 claims.
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13 Moreover, the Commissioners’ counsel has informed Plaintiffs that he had understood the
14 Court to be providing two weeks of trial, commencing June 5.² He has indicated that Commissioner
15 Walkinshaw may be out of the country the entire month of June 2023.³ Commissioner Sims plans
16 to be out of the country June 6-12 but has not indicated to her counsel whether she is available to
17 testify on June 5. Commissioner Fain is not available the week of June 5 at all because of a “work
18 event,” but is available the week of June 12. Only Commissioner Graves has provided available
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22 ² Several of the *Soto Palmer* Plaintiffs and witnesses are unavailable the week of June 12, 2023.
23 For example, Mr. Gaber and Plaintiffs’ expert Dr. Collingwood (who will likely need to testify in
24 Plaintiffs’ rebuttal case as well) have trial beginning June 12 in federal court in North Dakota. *See*
25 *Turtle Mountain Band of Chippewa Indians v. Howe*, No. 22-cv-22 (D.N.D.). That trial was
26 scheduled based upon this Court having scheduled a May 1, 2023 trial in this case. Others have
immovable family commitments that week.

³ Apparently Commissioner Walkinshaw is willing to testify remotely. Plaintiffs do not believe
remote testimony in a discriminatory intent trial is sufficient.

1 dates to attend trial during the week of June 5. While Plaintiffs do not understand why the
2 Commissioners have decided to plan international travel during the trial setting, and believe their
3 attendance could be nevertheless compelled by the Court, these issues lead Plaintiffs to seek the
4 Court's clarification and relief.

5 If the Court has indeed scheduled just a 5-day trial for both *Soto Palmer* claims and the
6 *Garcia* claim, then the Soto Palmer Plaintiffs respectfully request that the Court bifurcate the *Soto*
7 *Palmer* Section 2 intent claim and the *Garcia* racial gerrymandering claim and reset them for
8 additional trial dates this summer. This makes sense for two reasons: (1) the Commissioners'
9 testimony regarding their intent is critical to both claims and they should testify live in Court yet
10 several will be out of the country or otherwise unavailable during the June 5 setting, and (2)
11 resolution of the *Soto Palmer* Plaintiffs' Section 2 results claim by Judge Lasnik may make it
12 unnecessary for the remaining two legal claims to be tried at all. Moreover, the expert and lay
13 witness testimony relevant to the Section 2 discriminatory results claim—testimony about the
14 *Gingles* factors and totality of circumstances—can be tried separate from the facts related to the
15 presence of discriminatory intent or racial predominance, without causing duplication between the
16 two trial settings. This approach would also serve judicial economy by requiring the presence of
17 the remaining two judges only for testimony and evidence relevant to the *Garcia* claim over which
18 they have jurisdiction.⁴
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24 ⁴ The State takes no position on the request for clarification but opposes bifurcation. Counsel for
25 Intervenor-Defendants and the *Garcia* Plaintiff oppose this request. The Secretary of State takes
26 no position.

1 A 1.6 day limit would prejudice the *Soto Palmer* Plaintiffs’ ability to adequately present
2 their case, and would result in this Court hearing a vastly incomplete version of the material
3 evidence in this case.
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1 Dated: May 1, 2023

2 By: /s/ Edwardo Morfin

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15 *Admitted pro hac vice

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CERTIFICATE OF SERVICE

I certify that all counsel of record were served a copy of the foregoing this 1st day of May, 2023 via the Court’s CM/ECF system.

/s/ Edwardo Morfin

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