

The Honorable Robert S. Lasnik

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

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

DECLARATION OF AARON E.
MILLSTEIN IN SUPPORT OF NON-
PARTY COMMISSIONERS'
STATEMENT IN RESPONSE TO
COURT ORDER

I, Aaron E. Millstein, make the following declaration based on my personal knowledge.

1. I am over the age of 18, and I am competent to testify. I am an attorney licensed to practice law in the State of Washington and admitted to practice before this Court. I am a partner of K&L Gates, LLP and counsel for the former Washington State Redistricting Commissioners Brady Walkinshaw, Paul Graves, April Sims, and Joe Fain ("Commissioners") in the above captioned matter (the "Action"). I make this declaration in support of the Non-Party Commissioners' Statement Regarding the Court's Order. The facts set forth below are within my

DECLARATION OF AARON E. MILLSTEIN IN SUPPORT OF NON-PARTY COMMISSIONERS'
STATEMENT IN RESPONSE TO COURT ORDER

1 personal knowledge.

2 2. On April 21, 2023, the State's counsel called to inform me that the State intended
3 to call the four voting Commissioners as witnesses during the trial, scheduled for June 5. The
4 State's counsel indicated during the call that the trial would be two weeks and requested the
5 Commissioners' availability.

6 3. Based on this information, that trial started June 5 and lasted two weeks, I requested
7 availability from the four voting Commissioners. The Commissioners responded with their
8 availability based on the understanding that trial was scheduled for two weeks:

9 a. Commissioner Graves was available June 5, 7 (until 3pm), 8, 13, 14, and 15.

10 b. Commissioner Sims was traveling June 6-12 and again from June 14-15 in pre-
11 planned trips out of state.

12 c. Commissioner Fain informed me that he had an annual work event June 8 and that
13 testifying during the second week of trial would be best for availability.

14 d. Commissioner Walkinshaw informed me that he planned to be in Mexico City the
15 month of June and inquired about remote testimony if possible.

16 4. I informed the State's counsel regarding the above availability.

17 5. Plaintiffs' counsel subsequently called me to discuss the Commissioners'
18 availability, stating that there appeared to be a disagreement between the parties regarding the
19 length of the trial. During the call, I provided the above availability for the Commissioners, noting
20 that I was checking to see whether Commissioner Walkinshaw could be available the week of June
21 5 in person and whether Commissioner Sims could be available June 5 or June 13. I also asked
22 whether virtual testimony would be feasible. I further stated that the availability provided was
23 based on the understanding that trial would be two weeks, not one week.

24 6. I informed Plaintiffs' counsel that the reason the Commissioners did not have more
25 availability was because no party had informed the Commissioners they would be called as

26 DECLARATION OF AARON E. MILLSTEIN IN SUPPORT OF NON-PARTY COMMISSIONERS'
STATEMENT IN RESPONSE TO COURT ORDER

1 witnesses the week of June 5.

2 7. After this call with Plaintiffs' counsel, I requested updated availability from the
3 Commissioners and received updated information from Commissioners Walkinshaw and Sims on
4 Friday, April 28, 2023. I was not able to convey this information to Plaintiffs' counsel before they
5 filed their Motion for Clarification on May 1, 2023.

6 8. Upon reviewing the Plaintiffs' Motion for Clarification and the Court's May 2,
7 2023 Order, I requested a call with the parties to discuss my client's availability for trial. The
8 parties exchanged emails regarding witness availability. A copy of the exchange is attached hereto
9 as Exhibit A.

10 9. During a video conference call on May 4, 2023 with the parties, I requested that
11 Plaintiffs' counsel clarify with the Court (1) that three Commissioners were not traveling
12 internationally during trial and (2) that Plaintiffs had not requested the Commissioners be available
13 for trial the week of June 5. Plaintiffs did not confirm they would do so.

14 10. I declare under penalty of perjury under the laws of the United States that the
15 foregoing is true and correct.

16
17
18 EXECUTED this 9th day of May, 2023 at Seattle, Washington.

19 K&L GATES LLP

20
21
22 /s/ Aaron E. Millstein
23 Aaron E. Millstein

24
25
26 DECLARATION OF AARON E. MILLSTEIN IN SUPPORT OF NON-PARTY COMMISSIONERS'
STATEMENT IN RESPONSE TO COURT ORDER

Exhibit A

From: Millstein, Aaron E.
To: "Annabelle Harless"; Chad Dunn; Jessica Goldman
Cc: Dallin Holt; Mark Gaber; Simone Leeper; Sepe, Cristina (ATG); erica.franklin@atg.wa.gov; Worthington, Kate S. (ATG); Phil Gordon; Drew Stokesbary; Andrew Pardue; Brennan Bowen; Aseem Mulji; Benjamin Phillips; Eddie@MorfinLawFirm.com; Erika Cervantes; Ernest Herrera; Sonni Waknin; Elizabeth Holcombe; McKay, Mike; Jason Torchinsky; andrew.hughes@atg.wa.gov; Smith, Karl David (ATG)
Bcc: "2073545_00001_Third_Party_Subpoenas_Email"
Subject: RE: Soto Palmer: clarification motion [KLG-USW_Active01.FID1297168]
Date: Wednesday, May 03, 2023 1:58:30 PM
Attachments: [image016.png](#)
[image017.png](#)
[image018.png](#)
[image019.png](#)

Annabelle,

We are not asserting that you inaccurately communicated my clients' availability issues. Our problem is with this statement: "While Plaintiffs do not understand why the Commissioners have decided to plan international travel during the trial setting, and believe their attendance could be nevertheless compelled by the Court, these issues lead Plaintiffs to seek the Court's clarification and relief." I specifically told you that the reason this was not on any of my clients' calendars was because *no party informed us they wanted them to be witnesses*. Without a subpoena or at least a request that we be available to testify the week of June 5, our clients had no reason to adjust their travel plan.

Moreover, an earlier statement in the motion states: "Moreover, the *Soto Palmer* Plaintiffs have also just now been informed that three of the Redistricting Commission's commissioners—key witnesses to their Section 2 discriminatory *intent* claim—have scheduled international trips during the week of June 5 or are otherwise unavailable." This statement implies that a party informed my clients they were your "key witnesses" and knew you were going to call them as witnesses the week of June 5. Regrettably, the Court relied on your incomplete representation.

We look forward to discussing on our call tomorrow the manner in which this record will be corrected.

Best,
Aaron

K&L GATES

Aaron E. Millstein

K&L Gates LLP

Phone: (206) 370-8071

aaron.millstein@klgates.com

From: Annabelle Harless <aharless@campaignlegalcenter.org>

Sent: Wednesday, May 03, 2023 11:35 AM

To: Millstein, Aaron E. <Aaron.Millstein@klgates.com>; Chad Dunn <chad@uclavrp.org>; Jessica Goldman <jessicag@summitlaw.com>

Cc: Dallin Holt <dholt@holtzmanvogel.com>; Mark Gaber <MGaber@campaignlegalcenter.org>; Simone Leeper <SLeeper@campaignlegalcenter.org>; Sepe, Cristina (ATG) <cristina.sepe@atg.wa.gov>; erica.franklin@atg.wa.gov; Worthington, Kate S. (ATG) <kate.worthington@atg.wa.gov>; Phil Gordon

<pgordon@holtzmanvogel.com>; Drew Stokesbary <dstokesbary@chalmersadams.com>; Andrew Pardue <apardue@holtzmanvogel.com>; Brennan Bowen <bbowen@holtzmanvogel.com>; Aseem Mulji <amulji@campaignlegalcenter.org>; Benjamin Phillips <bphillips@campaignlegalcenter.org>; Eddie@MorfinLawFirm.com; Erika Cervantes <ecervantes@maldef.org>; Ernest Herrera <eherrera@maldef.org>; Sonni Waknin <sonni@uclavrp.org>; Elizabeth Holcombe <eholcombe@holtzmanvogel.com>; McKay, Mike <Mike.McKay@klgates.com>; Jason Torchinsky <jtorchinsky@holtzmanvogel.com>; andrew.hughes@atg.wa.gov; Smith, Karl David (ATG) <karl.smith@atg.wa.gov>

Subject: Re: Soto Palmer: clarification motion [KLG-USW_Active01.FID1297168]

External Sender:

Aaron,

I can assure you that Mr. Dunn is not mischaracterizing our conversation. Attached is Plaintiffs' motion for clarification filed with the court – upon review, please note that we state the following regarding the commissioners' availability: "Moreover, the Soto Palmer Plaintiffs have also just now been informed that three of the Redistricting Commission's commissioners—key witnesses to their Section 2 discriminatory intent claim—have scheduled international trips during the week of June 5 **or are otherwise unavailable.**" We also additionally note verbatim what you and I discussed on our phone call regarding the commissioners' availability on pages 3-4 of the motion.

We look forward to discussing further tomorrow.

Best,

Annabelle

Annabelle E. Harless

Senior Legal Counsel, Redistricting
C: 810.701.5029 | [@a_harless](#)
Campaign Legal Center
55 W. Monroe Street, Suite 1925
Chicago, IL 60603
campaignlegalcenter.org

[Facebook](#) | [Twitter](#)

From: Millstein, Aaron E. <Aaron.Millstein@klgates.com>

Date: Wednesday, May 3, 2023 at 12:48 PM

To: Chad Dunn <chad@uclavrp.org>, Jessica Goldman <jessicag@summitlaw.com>

Cc: Dallin Holt <dholt@holtzmanvogel.com>, Mark Gaber <MGaber@campaignlegalcenter.org>, Simone Leeper <SLeeper@campaignlegalcenter.org>, Sepe, Cristina (ATG)

<crisrina.sepe@atg.wa.gov>, erica.franklin@atg.wa.gov <erica.franklin@atg.wa.gov>, Worthington, Kate S. (ATG) <kate.worthington@atg.wa.gov>, Phil Gordon <pgordon@holtzmanvogel.com>, Drew Stokesbary <dstokesbary@chalmersadams.com>, Andrew Pardue <apardue@holtzmanvogel.com>, Brennan Bowen <bbowen@holtzmanvogel.com>, Annabelle Harless <aharless@campaignlegalcenter.org>, Aseem Mulji <amulji@campaignlegalcenter.org>, Benjamin Phillips <bphillips@campaignlegalcenter.org>, Eddie@MorfinLawFirm.com <Eddie@morfinlawfirm.com>, Erika Cervantes <ecervantes@maldef.org>, Ernest Herrera <eherrera@maldef.org>, Sonni Waknin <sonni@uclavrp.org>, Elizabeth Holcombe <eholcombe@holtzmanvogel.com>, McKay, Mike <Mike.McKay@klgates.com>, Jason Torchinsky <jtorchinsky@holtzmanvogel.com>, andrew.hughes@atg.wa.gov <andrew.hughes@atg.wa.gov>, Smith, Karl David (ATG) <karl.smith@atg.wa.gov>

Subject: RE: Soto Palmer: clarification motion [KLG-USW_Active01.FID1297168]

Mr. Dunn,

Respectfully, you are mischaracterizing my conversation with Ms. Harless (and I apologize for mistakenly identifying her as Ms. Harris) and making this process more antagonistic than necessary. Your motion failed to inform the court that plaintiffs never informed the commissioners that they intended to call them at trial the week of June 5th. Moreover, the motion incorrectly stated that three of the commissioners were traveling internationally the week of June 5th.

Regardless, we remain committed to working with the parties and my clients have shifted their schedules as they are able to make themselves available. To follow-up on my earlier email, Ms. Sims is available June 5 all day. Moreover, after being informed that trial is only one week, Mr. Fain has rearranged matters to be available on June 9 and, if absolutely necessary, June 5 or 6.

I can attend a call with the parties Thursday before 2:30pm as well.

Best,
Aaron

K&L GATES

Aaron E. Millstein

K&L Gates LLP

Phone: (206) 370-8071

aaron.millstein@klgates.com

From: Chad Dunn <chad@uclavrp.org>

Sent: Tuesday, May 02, 2023 6:15 PM

To: Jessica Goldman <jessicag@summitlaw.com>

Cc: Dallin Holt <dholt@holtzmanvogel.com>; Millstein, Aaron E. <Aaron.Millstein@klgates.com>; Mark Gaber <MGaber@campaignlegalcenter.org>; Simone Leeper <SLeeper@campaignlegalcenter.org>; Sepe, Cristina (ATG) <crisrina.sepe@atg.wa.gov>; Franklin, Erica (ATG) <erica.franklin@atg.wa.gov>; Worthington, Kate S. (ATG) <kate.worthington@atg.wa.gov>; Phil Gordon <pgordon@holtzmanvogel.com>; Drew Stokesbary <dstokesbary@chalmersadams.com>; Andrew Pardue <apardue@holtzmanvogel.com>; Brennan Bowen <bbowen@holtzmanvogel.com>; Annabelle

Harless <aharless@campaignlegalcenter.org>; Aseem Mulji <amulji@campaignlegalcenter.org>; Benjamin Phillips <bpillips@campaignlegalcenter.org>; Eddie@MorfinLawFirm.com; Erika Cervantes <ecervantes@maldef.org>; Ernest Herrera <eherrera@maldef.org>; Sonni Waknin <sonni@uclavrp.org>; Elizabeth Holcombe <eholcombe@holtzmanvogel.com>; McKay, Mike <Mike.McKay@klgates.com>; Jason Torchinsky <jtorchinsky@holtzmanvogel.com>; Hughes, Andrew (ATG) <andrew.hughes@atg.wa.gov>; Smith, Karl David (ATG) <karl.smith@atg.wa.gov>
Subject: Re: Soto Palmer: clarification motion [KLG-USW_Active01.FID1297168]

Good evening,

Plaintiffs can be available Thursday at noon pt. Unless I missed a message, that seems to work for every group. We will circulate a calendar invite if there is no objection.

On Tue, May 2, 2023 at 5:54 PM Jessica Goldman <jessicag@summitlaw.com> wrote:

Counsel:

I will be leaving for Yakima Thursday at 2:30pm. I can be available any time before 2:30.

Jessica Goldman · Partner

Pronouns: she/her
206-676-7062
jessicag@SummitLaw.com

[LinkedIn](#) · [Super Lawyers](#) · [Best Lawyers](#)



315 5th Ave S Suite 1000
Seattle, Washington 98104

From: Dallin Holt <dholt@holtzmanvogel.com>
Sent: Tuesday, May 2, 2023 3:25 PM
To: Jessica Goldman <jessicag@SummitLaw.com>
Cc: Millstein, Aaron E. <Aaron.Millstein@klgates.com>; Mark Gaber <MGaber@campaignlegalcenter.org>; Simone Leeper <SLeeper@campaignlegalcenter.org>; Sepe, Cristina (ATG) <cristina.sepe@atg.wa.gov>; Franklin, Erica (ATG) <erica.franklin@atg.wa.gov>; Worthington, Kate S. (ATG) <kate.worthington@atg.wa.gov>; Phil Gordon <pgordon@holtzmanvogel.com>; Drew Stokesbary <dstokesbary@chalmersadams.com>; Andrew Pardue <apardue@holtzmanvogel.com>; Brennan Bowen <bbowen@holtzmanvogel.com>; Annabelle Harless <aharless@campaignlegalcenter.org>; Aseem Mulji <amulji@campaignlegalcenter.org>; Benjamin Phillips <bpillips@campaignlegalcenter.org>; Eddie@MorfinLawFirm.com; Erika Cervantes <ecervantes@maldef.org>; Ernest Herrera <eherrera@maldef.org>; Sonni Waknin <sonni@uclavrp.org>; Elizabeth Holcombe <eholcombe@holtzmanvogel.com>; McKay, Mike <Mike.McKay@klgates.com>; Jason Torchinsky <jtorchinsky@holtzmanvogel.com>; Chad Dunn <chad@uclavrp.org>; Hughes, Andrew (ATG) <andrew.hughes@atg.wa.gov>; Smith, Karl David (ATG) <karl.smith@atg.wa.gov>
Subject: Re: Soto Palmer: clarification motion [KLG-USW_Active01.FID1297168]

Jessica:

Please see our conversation below and the attached Court order. We all need to get together and come-up with a plan regarding trial logistics and witness availability. I think it would be a good idea for you to participate in such a call. As such, please advise as to your availability for this Thursday.

Thanks,

Dallin Holt

Of Counsel

Holtzman Vogel

Office: 602.388.1262

dholt@HoltzmanVogel.com // www.HoltzmanVogel.com

From: "Smith, Karl David (ATG)" <karl.smith@atg.wa.gov>

Date: Tuesday, May 2, 2023 at 3:21 PM

To: Dallin Holt <dholt@holtzmanvogel.com>, "Hughes, Andrew (ATG)" <andrew.hughes@atg.wa.gov>, Chad Dunn <chad@uclavrp.org>

Cc: "Millstein, Aaron E." <Aaron.Millstein@klgates.com>, Mark Gaber <MGaber@campaignlegalcenter.org>, Simone Leeper <SLeeper@campaignlegalcenter.org>, "Sepe, Cristina (ATG)" <cristina.sepe@atg.wa.gov>, "Franklin, Erica (ATG)" <erica.franklin@atg.wa.gov>, "Worthington, Kate S. (ATG)" <kate.worthington@atg.wa.gov>, Phil Gordon <pgordon@holtzmanvogel.com>, Drew Stokesbary <dstokesbary@chalmersadams.com>, Andrew Pardue <apardue@holtzmanvogel.com>, Brennan Bowen <bbowen@holtzmanvogel.com>, Annabelle Harless <aharless@campaignlegalcenter.org>, Aseem Mulji <amulji@campaignlegalcenter.org>, Benjamin Phillips <bphillips@campaignlegalcenter.org>, "Eddie@MorfinLawFirm.com" <Eddie@morfinlawfirm.com>, Erika Cervantes <ecervantes@maldef.org>, Ernest Herrera <eherrera@maldef.org>, Sonni Waknin <sonni@uclavrp.org>, Elizabeth Holcombe <eholcombe@holtzmanvogel.com>, "McKay, Mike" <Mike.McKay@klgates.com>, Jason Torchinsky <jtorchinsky@holtzmanvogel.com>

Subject: RE: Soto Palmer: clarification motion [KLG-USW_Active01.FID1297168]

I am also available during those times.

Karl

Karl D. Smith

Deputy Solicitor General

Washington State Attorney General's Office

t 360.664.2510 f 360.664.2963

karl.smith@atg.wa.gov

From: Dallin Holt <dholt@holtzmanvogel.com>

Sent: Tuesday, May 2, 2023 3:18 PM

To: Hughes, Andrew (ATG) <andrew.hughes@atg.wa.gov>; Chad Dunn <chad@uclavrp.org>

Cc: Millstein, Aaron E. <Aaron.Millstein@klgates.com>; Mark Gaber <MGaber@campaignlegalcenter.org>; Smith, Karl David (ATG) <karl.smith@atg.wa.gov>; Simone Leeper <SLeeper@campaignlegalcenter.org>; Sepe, Cristina (ATG) <cristina.sepe@atg.wa.gov>; Franklin, Erica (ATG) <erica.franklin@atg.wa.gov>; Worthington, Kate S. (ATG) <kate.worthington@atg.wa.gov>; Phil Gordon <pgordon@holtzmanvogel.com>; Drew Stokesbary <dstokesbary@chalmersadams.com>; Andrew Pardue <apardue@holtzmanvogel.com>; Brennan Bowen <bbowen@holtzmanvogel.com>; Annabelle Harless <aharless@campaignlegalcenter.org>; Aseem Mulji <amulji@campaignlegalcenter.org>; Benjamin Phillips <bphillips@campaignlegalcenter.org>; Eddie@MorfinLawFirm.com <Eddie@MorfinLawFirm.com>; Erika Cervantes <ecervantes@maldef.org>; Ernest Herrera <eherrera@maldef.org>; Sonni Waknin <sonni@uclavrp.org>; Elizabeth Holcombe <eholcombe@holtzmanvogel.com>; McKay, Mike <Mike.McKay@klgates.com>; Jason Torchinsky <jtorchinsky@holtzmanvogel.com>

Subject: Re: Soto Palmer: clarification motion [KLG-USW_Active01.FID1297168]

[EXTERNAL]

Chad and Andrew:

I am available on Thursday, any time before 2:30 p.m. PT., with the exception of 8:00 a.m. – 9:00 a.m. PT.

Thanks,

Dallin Holt

Of Counsel

Holtzman Vogel

Office: 602.388.1262

dholt@HoltzmanVogel.com // www.HoltzmanVogel.com

From: "Hughes, Andrew (ATG)" <andrew.hughes@atg.wa.gov>

Date: Tuesday, May 2, 2023 at 2:12 PM

To: Chad Dunn <chad@uclavrp.org>, Jason Torchinsky <jtorchinsky@holtzmanvogel.com>

Cc: "Millstein, Aaron E." <Aaron.Millstein@klgates.com>, Mark Gaber <MGaber@campaignlegalcenter.org>, "Smith, Karl David (ATG)" <karl.smith@atg.wa.gov>, Dallin Holt <dholt@holtzmanvogel.com>, Simone Leeper <SLeeper@campaignlegalcenter.org>, "Sepe, Cristina (ATG)" <cristina.sepe@atg.wa.gov>, "Franklin, Erica (ATG)" <erica.franklin@atg.wa.gov>, "Worthington, Kate S. (ATG)" <kate.worthington@atg.wa.gov>, Phil Gordon <pgordon@holtzmanvogel.com>, Drew Stokesbary <dstokesbary@chalmersadams.com>, Andrew Pardue <apardue@holtzmanvogel.com>, Brennan Bowen <bbowen@holtzmanvogel.com>, Annabelle Harless <aharless@campaignlegalcenter.org>, Aseem Mulji <amulji@campaignlegalcenter.org>, Benjamin Phillips <bphillips@campaignlegalcenter.org>, "Eddie@MorfinLawFirm.com" <Eddie@morfinlawfirm.com>, Erika Cervantes <ecervantes@maldef.org>, Ernest Herrera <eherrera@maldef.org>, Sonni Waknin <sonni@uclavrp.org>, Elizabeth Holcombe <eholcombe@holtzmanvogel.com>, "McKay, Mike"

<Mike.McKay@klgates.com>

Subject: RE: Soto Palmer: clarification motion [KLG-USW_Active01.FID1297168]

Chad,

Your accusation that any party is trying to obstruct Plaintiffs' case is entirely unfounded, but not worth getting into here.

The State can be free Thursday any time until 3:30 Pacific, with the exceptions of 10-11 and 1:30 to 2 Pacific.

Regarding availability and subpoenas of represented witnesses, the State has no further information, but I should point out that Jessica Goldman, who represents, among others, the Commission staffers is not on this email thread.

Andrew

Andrew Hughes (he/him)
Section Chief
Complex Litigation Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
andrew.hughes@atg.wa.gov
Telephone: 206-498-8113

From: Chad Dunn <chad@uclavrp.org>

Sent: Tuesday, May 2, 2023 1:39 PM

To: Jason Torchinsky <jtorchinsky@holtzmanvogel.com>

Cc: Millstein, Aaron E. <Aaron.Millstein@klgates.com>; Mark Gaber <MGaber@campaignlegalcenter.org>; Smith, Karl David (ATG) <karl.smith@atg.wa.gov>; Hughes, Andrew (ATG) <andrew.hughes@atg.wa.gov>; Dallin Holt <dholt@holtzmanvogel.com>; Simone Leeper <SLeeper@campaignlegalcenter.org>; Sepe, Cristina (ATG) <cristina.sepe@atg.wa.gov>; Franklin, Erica (ATG) <erica.franklin@atg.wa.gov>; Worthington, Kate S. (ATG) <kate.worthington@atg.wa.gov>; Phil Gordon <pgordon@holtzmanvogel.com>; Drew Stokesbary <dstokesbary@chalmersadams.com>; Andrew Pardue <apardue@holtzmanvogel.com>; Brennan Bowen <bbowen@holtzmanvogel.com>; Annabelle Harless <aharless@campaignlegalcenter.org>; Aseem Mulji <amulji@campaignlegalcenter.org>; Benjamin Phillips <bphillips@campaignlegalcenter.org>; Eddie @MorfinLawFirm.com <Eddie@MorfinLawFirm.com>; Erika Cervantes <ecervantes@maldef.org>; Ernest Herrera <eherrera@maldef.org>; Sonni Waknin <sonni@uclavrp.org>; Elizabeth Holcombe <eholcombe@holtzmanvogel.com>; McKay, Mike <Mike.McKay@klgates.com>

Subject: Re: Soto Palmer: clarification motion [KLG-USW_Active01.FID1297168]

[EXTERNAL]

Good afternoon,

Thank you for circulating the Court's order. We are prepared to meet and confer as the Court ordered.

On the emails below, we could not disagree more with counsels' latest characterizations of the discussion last Thursday that Mr. Millstein had with Ms. Harless (improperly identified as Harris) and the discussion also last Thursday with Defendant and Intervenor/Garcia Plaintiff counsel that included several of Plaintiffs' counsel, including myself. We were told that 3 members of the commission were possibly not available for trial. In one example we were told that Commissioner Brady Wakinshaw was potentially out of the country the entire month of June and might be available by zoom. Ms. Harless, at Mr. Hughes' suggestion, then called Mr. Millstein and was told the same thing, as reflected in her contemporaneous notes of the conversation. Now, after Plaintiffs filed a motion, we received today notice that each of the commissionerers actually can be available but now only on specified days and times.

Also, Mr. Hughes mentioned on the call with Plaintiffs' counsel that he thought the trial was 10 days. Mr. Millstein later made the same statement to Ms. Harless in their call.

From our perspective, this entire episode of counsel conference of the last week has evolved over time in an effort to limit Plaintiffs' trial time and otherwise obstruct the presentation of their case.

Regardless, it is doubtful the Court wants to litigate which counsel said what about scheduling up until now. The task at hand, as ordered by the Court, is to confer on an appropriate solution that allows the Court to hear all the relevant evidence in order to decide the important factual and legal issues in the case. We are available Thursday at most times for this purpose. Are there times that work with others?

We would also like to receive more information on the conflicts that prevent the Commissioners from attending trial except as specified in the latest email. Also, each of you have no doubt seen our will call/may call list. If you have any information about the availability of those persons listed, we request that information right away. We can proceed to subpoena each of the necessary witnesses represented by the various lawyers hereon but we would expect as professionals that step would not be necessary for represented witnesses.

Regards,

Chad W. Dunn

On Tue, May 2, 2023 at 2:50 PM Jason Torchinsky <jtorchinsky@holtzmanvogel.com> wrote:

Aaron,

In the interest of keeping everyone on the same page, attached is an order just entered by the Court. You may want to note in here the Court's perception of the Plaintiff's representations about the Commissioners' availability.

Thanks,
Jason

Jason Torchinsky

Partner

Holtzman Vogel

Office: 202.737.8808

Mobile: 202.302.6768

itorchinsky@HoltzmanVogel.com // www.HoltzmanVogel.com

From: Millstein, Aaron E. <Aaron.Millstein@klgates.com>

Date: Tuesday, May 2, 2023 at 1:42 PM

To: Mark Gaber <MGaber@campaignlegalcenter.org>, Chad Dunn <chad@uclavrp.org>, Smith, Karl David (ATG) <karl.smith@atg.wa.gov>

Cc: andrew.hughes@atg.wa.gov <andrew.hughes@atg.wa.gov>, Dallin Holt <dholt@holtzmanvogel.com>, Simone Leeper <SLeeper@campaignlegalcenter.org>, Sepe, Cristina (ATG) <cristina.sepe@atg.wa.gov>, erica.franklin@atg.wa.gov <erica.franklin@atg.wa.gov>, Worthington, Kate S. (ATG) <kate.worthington@atg.wa.gov>, Phil Gordon <pgordon@holtzmanvogel.com>, Jason Torchinsky <jtorchinsky@holtzmanvogel.com>, Drew Stokesbary <dstokesbary@chalmersadams.com>, Andrew Pardue <apardue@holtzmanvogel.com>, Brennan Bowen <bbowen@holtzmanvogel.com>, Annabelle Harless <aharless@campaignlegalcenter.org>, Aseem Mulji <amulji@campaignlegalcenter.org>, Benjamin Phillips <bphillips@campaignlegalcenter.org>, Eddie@MorfinLawFirm.com <Eddie@morfinlawfirm.com>, Erika Cervantes <ecervantes@maldef.org>, Ernest Herrera <eherrera@maldef.org>, Sonni Waknin <sonni@uclavrp.org>, Elizabeth Holcombe <eholcombe@holtzmanvogel.com>, McKay, Mike <Mike.McKay@klgates.com>

Subject: RE: Soto Palmer: clarification motion [KLG-USW_Active01.FID1297168]

Chad and Mark,

I'm sorry we were unable to connect yesterday and was surprised to hear that no one from plaintiffs' side was available. Ms. Harris called and left me a voicemail yesterday afternoon asking that I call her, which certainly reflected her availability. Regardless, below is the update regarding my clients' availability.

It is also important to be clear about the information conveyed to date. When I spoke with Ms. Harris last week, I let her know that I was still awaiting potential availability information from both Ms. Sims and Mr. Walkinshaw regarding the first week of June. Moreover, during my last conversation with Ms. Harris, it appeared the parties were in discussions regarding the length of the trial. I asked her to let me know regarding the trial length but had not heard any updates. My understanding now is that there is still some confusion regarding the trial date but that the parties believe it will be completed in one week. Assuming that is the case, I will contact Mr. Fain to determine if there is any flexibility for his testimony the week of June 5.

Since I last spoke with Ms. Harris, I have received the additional information regarding Ms. Sims and Mr. Walkinshaw's availability. Ms. Sims is available on June 5 after 11am PT. Mr. Walkinshaw is able to attend trial between June 5 and 9 but would strongly prefer to be called as early as possible given his travel. We also strenuously object to the characterization Plaintiffs make in their motion to the court filed yesterday that the Commissioners had any ill intent behind their travel. No party contacted us regarding my clients' availability until the State called me on April 21. My clients are not parties to this case and it is your responsibility to notify your witnesses of the trial date and that you intend to call them as witnesses at trial.

It was only after the State shared potential availability concerns with plaintiffs' counsel that you contacted me regarding my clients' availability for trial, which is set to begin in barely more than a month. We are committed to being flexible and making our clients available but would appreciate the courtesy of communication and transparency regarding scheduling, particularly how this is described to the court.

Based on my current information here is the availability of the four voting commissioners the week of June 5:

- Paul Graves: June 5, 7 until 3pm, 8
- April Sims: June 5 after 11am (I am confirming whether any additional flexibility may exist on starting at 11am)
- Brady Walkinshaw: June 5, 6, 7, 8, 9 (with a preference of being called earlier in the week)
- Joe Fain: Currently confirming potential availability in light of reduced trial length

Thank you,
Aaron

K&L GATES

Aaron E. Millstein

K&L Gates LLP

Phone: (206) 370-8071

aaron.millstein@klgates.com

From: Mark Gaber <MGaber@campaignlegalcenter.org>

Sent: Tuesday, May 02, 2023 10:22 AM

To: Chad Dunn <chad@uclavrp.org>; Smith, Karl David (ATG) <karl.smith@atg.wa.gov>

Cc: andrew.hughes@atg.wa.gov; Millstein, Aaron E. <Aaron.Millstein@klgates.com>;

Dallin Holt <dholt@holtzmanvogel.com>; Simone Leeper

<SLeeper@campaignlegalcenter.org>; Sepe, Cristina (ATG) <cristina.sepe@atg.wa.gov>;

erica.franklin@atg.wa.gov; Worthington, Kate S. (ATG) <kate.worthington@atg.wa.gov>;

Phil Gordon <pgordon@holtzmanvogel.com>; Jason Torchinsky

<jtorchinsky@holtzmanvogel.com>; Drew Stokesbary

<dstokesbary@chalmersadams.com>; Andrew Pardue <apardue@holtzmanvogel.com>;

Brennan Bowen <bbowen@holtzmanvogel.com>; Annabelle Harless

<aharless@campaignlegalcenter.org>; Aseem Mulji <amulji@campaignlegalcenter.org>;

Benjamin Phillips <bphillips@campaignlegalcenter.org>; Eddie@MorfinLawFirm.com;

Erika Cervantes <ecervantes@maldef.org>; Ernest Herrera <eherrera@maldef.org>; Sonni

Waknin <sonni@uclavrp.org>; Elizabeth Holcombe <eholcombe@holtzmanvogel.com>

Subject: RE: Soto Palmer: clarification motion [KLG-USW_Active01.FID1297168]

Aaron—

Can you please provide the update regarding witness availability?

Thanks,
Mark

From: Chad Dunn <chad@uclavrp.org>
Sent: Monday, May 1, 2023 4:19 PM
To: Smith, Karl David (ATG) <karl.smith@atg.wa.gov>
Cc: andrew.hughes@atg.wa.gov; Millstein, Aaron E. <Aaron.Millstein@klgates.com>; Dallin Holt <dholt@holtzmanvogel.com>; Mark Gaber <MGaber@campaignlegalcenter.org>; Simone Leeper <SLeeper@campaignlegalcenter.org>; Sepe, Cristina (ATG) <cristina.sepe@atg.wa.gov>; erica.franklin@atg.wa.gov; Worthington, Kate S. (ATG) <kate.worthington@atg.wa.gov>; Phil Gordon <pgordon@holtzmanvogel.com>; Jason Torchinsky <jtorchinsky@holtzmanvogel.com>; Drew Stokesbary <dstokesbary@chalmersadams.com>; Andrew Pardue <apardue@holtzmanvogel.com>; Brennan Bowen <bbowen@holtzmanvogel.com>; Annabelle Harless <aharless@campaignlegalcenter.org>; Aseem Mulji <amulji@campaignlegalcenter.org>; Benjamin Phillips <bphillips@campaignlegalcenter.org>; Eddie@MorfinLawFirm.com; Erika Cervantes <ecervantes@maldef.org>; Ernest Herrera <eherrera@maldef.org>; Sonni Waknin <sonni@uclavrp.org>; Elizabeth Holcombe <eholcombe@holtzmanvogel.com>
Subject: Re: Soto Palmer: clarification motion [KLG-USW_Active01.FID1297168]

Good afternoon,

Unfortunately all of the counsel for the Plaintiffs are tied up in all day meetings today and tomorrow. Can you let us know what new information you have developed and then we can get on a call on Wednesday if necessary?

On Mon, May 1, 2023 at 3:12 PM Smith, Karl David (ATG) <karl.smith@atg.wa.gov> wrote:

And for the Secretary.

From: Hughes, Andrew (ATG)
Sent: Monday, May 1, 2023 1:12 PM
To: Millstein, Aaron E. <Aaron.Millstein@klgates.com>; Dallin Holt <dholt@holtzmanvogel.com>; Mark Gaber' <MGaber@campaignlegalcenter.org>; Smith, Karl David (ATG) <karl.smith@atg.wa.gov>; 'Simone Leeper' <SLeeper@campaignlegalcenter.org>; Sepe, Cristina (ATG) <cristina.sepe@atg.wa.gov>; Franklin, Erica (ATG) <erica.franklin@atg.wa.gov>; Worthington, Kate S. (ATG) <kate.worthington@atg.wa.gov>; Phil Gordon <pgordon@HoltzmanVogel.com>; Jason Torchinsky <jtorchinsky@holtzmanvogel.com>; 'Drew Stokesbary' <dstokesbary@chalmersadams.com>; Andrew Pardue <apardue@holtzmanvogel.com>; Brennan Bowen <bbowen@HoltzmanVogel.com>
Cc: 'Annabelle Harless' <aharless@campaignlegalcenter.org>; 'Aseem Mulji' <amulji@campaignlegalcenter.org>; 'Benjamin Phillips' <bphillips@campaignlegalcenter.org>; 'chad@uclavrp.org' <chad@uclavrp.org>; 'Eddie@MorfinLawFirm.com' <Eddie@MorfinLawFirm.com>; 'Erika Cervantes' <ecervantes@maldef.org>; 'Ernest Herrera' <eherrera@maldef.org>; 'Sonni Waknin' <sonni@uclavrp.org>; Elizabeth Holcombe <eholcombe@HoltzmanVogel.com>
Subject: RE: Soto Palmer: clarification motion [KLG-USW_Active01.FID1297168]

Aaron,

That works for the State. Thanks.

Andrew

Andrew Hughes (he/him)
Section Chief
Complex Litigation Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
andrew.hughes@atg.wa.gov
Telephone: 206-498-8113

From: Millstein, Aaron E. <Aaron.Millstein@klgates.com>
Sent: Monday, May 1, 2023 1:10 PM
To: Dallin Holt <dholt@holtzmanvogel.com>; Hughes, Andrew (ATG) <andrew.hughes@atg.wa.gov>; 'Mark Gaber' <MGaber@campaignlegalcenter.org>; Smith, Karl David (ATG) <karl.smith@atg.wa.gov>; 'Simone Leeper' <SLeeper@campaignlegalcenter.org>; Sepe, Cristina (ATG) <cristina.sepe@atg.wa.gov>; Franklin, Erica (ATG) <erica.franklin@atg.wa.gov>; Worthington, Kate S. (ATG) <kate.worthington@atg.wa.gov>; Phil Gordon <pgordon@HoltzmanVogel.com>; Jason Torchinsky <jtorchinsky@holtzmanvogel.com>; 'Drew Stokesbary' <dstokesbary@chalmersadams.com>; Andrew Pardue <apardue@holtzmanvogel.com>; Brennan Bowen <bbowen@HoltzmanVogel.com>
Cc: 'Annabelle Harless' <aharless@campaignlegalcenter.org>; 'Aseem Mulji' <amulji@campaignlegalcenter.org>; 'Benjamin Phillips' <bphillips@campaignlegalcenter.org>; 'chad@uclavrp.org' <chad@uclavrp.org>; 'Eddie@MorfinLawFirm.com' <Eddie@MorfinLawFirm.com>; 'Erika Cervantes' <ecervantes@maldef.org>; 'Ernest Herrera' <eherrera@maldef.org>; 'Sonni Waknin' <sonni@uclavrp.org>; Elizabeth Holcombe <eholcombe@HoltzmanVogel.com>
Subject: RE: Soto Palmer: clarification motion [KLG-USW_Active01.FID1297168]

[EXTERNAL]

Hi,

Could someone from each of the parties speak at 1:30pm PT? I think it would be beneficial to have a call between all counsel regarding availability to avoid a game of telephone and to ensure that all parties have the same information.

Thank you,
Aaron

K&L GATES
Aaron E. Millstein
K&L Gates LLP

Phone: (206) 370-8071
aaron.millstein@klgates.com

From: Dallin Holt <dholt@holtzmanvogel.com>
Sent: Monday, May 01, 2023 1:07 PM
To: Hughes, Andrew (ATG) <andrew.hughes@atg.wa.gov>; 'Mark Gaber' <MGaber@campaignlegalcenter.org>; Smith, Karl David (ATG) <karl.smith@atg.wa.gov>; 'Simone Leeper' <SLeeper@campaignlegalcenter.org>; Sepe, Cristina (ATG) <cristina.sepe@atg.wa.gov>; Franklin, Erica (ATG) <erica.franklin@atg.wa.gov>; Worthington, Kate S. (ATG) <kate.worthington@atg.wa.gov>; Phil Gordon <pgordon@HoltzmanVogel.com>; Jason Torchinsky <jtorchinsky@holtzmanvogel.com>; Millstein, Aaron E. <Aaron.Millstein@klgates.com>; 'Drew Stokesbary' <dstokesbary@chalmersadams.com>; Andrew Pardue <apardue@holtzmanvogel.com>; Brennan Bowen <bbowen@HoltzmanVogel.com>
Cc: 'Annabelle Harless' <aharless@campaignlegalcenter.org>; 'Aseem Mulji' <amulji@campaignlegalcenter.org>; 'Benjamin Phillips' <bphillips@campaignlegalcenter.org>; 'chad@uclavrp.org' <chad@uclavrp.org>; 'Eddie@MorfinLawFirm.com' <Eddie@MorfinLawFirm.com>; 'Erika Cervantes' <ecervantes@maldef.org>; 'Ernest Herrera' <eherrera@maldef.org>; 'Sonni Waknin' <sonni@uclavrp.org>; Elizabeth Holcombe <eholcombe@HoltzmanVogel.com>
Subject: Re: Soto Palmer: clarification motion

I can jump on a call within the next few hours.

Thanks,

Dallin Holt
Of Counsel
Holtzman Vogel
Office: 602.388.1262
dholt@HoltzmanVogel.com // www.HoltzmanVogel.com

From: "Hughes, Andrew (ATG)" <andrew.hughes@atg.wa.gov>
Date: Monday, May 1, 2023 at 12:59 PM
To: 'Mark Gaber' <MGaber@campaignlegalcenter.org>, "Smith, Karl David (ATG)" <karl.smith@atg.wa.gov>, Dallin Holt <dholt@holtzmanvogel.com>, 'Simone Leeper' <SLeeper@campaignlegalcenter.org>, "Sepe, Cristina (ATG)" <cristina.sepe@atg.wa.gov>, "Franklin, Erica (ATG)" <erica.franklin@atg.wa.gov>, "Worthington, Kate S. (ATG)" <kate.worthington@atg.wa.gov>, Phil Gordon <pgordon@HoltzmanVogel.com>, Jason Torchinsky <jtorchinsky@holtzmanvogel.com>, "Millstein, Aaron E." <Aaron.Millstein@klgates.com>, 'Drew Stokesbary' <dstokesbary@chalmersadams.com>, Andrew Pardue <apardue@holtzmanvogel.com>, Brennan Bowen <bbowen@HoltzmanVogel.com>
Cc: 'Annabelle Harless' <aharless@campaignlegalcenter.org>, 'Aseem Mulji' <amulji@campaignlegalcenter.org>, 'Benjamin Phillips' <bphillips@campaignlegalcenter.org>, "'chad@uclavrp.org'" <chad@uclavrp.org>, "'Eddie@MorfinLawFirm.com'" <Eddie@MorfinLawFirm.com>, 'Erika Cervantes' <ecervantes@maldef.org>, 'Ernest Herrera' <eherrera@maldef.org>, 'Sonni Waknin' <sonni@uclavrp.org>, Elizabeth Holcombe <eholcombe@HoltzmanVogel.com>

Subject: RE: Soto Palmer: clarification motion

All,

I just spoke with the Commissioners' counsel, Aaron Millstein, and he has updated information regarding the Commissioners' availability at trial. Can we all get on the phone this afternoon to discuss with Aaron and hopefully resolve the issue regarding the Commissioners' testimony? Thanks.

Andrew

Andrew Hughes (he/him)
Section Chief
Complex Litigation Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
andrew.hughes@atg.wa.gov
Telephone: 206-498-8113

From: Hughes, Andrew (ATG)
Sent: Monday, May 1, 2023 12:00 PM
To: Mark Gaber <MGaber@campaignlegalcenter.org>; Smith, Karl David (ATG) <karl.smith@atg.wa.gov>; 'Dallin Holt' <dholt@holtzmanvogel.com>; Simone Leeper <SLeeper@campaignlegalcenter.org>; Sepe, Cristina (ATG) <Cristina.Sepe@atg.wa.gov>; Franklin, Erica (ATG) <Erica.Franklin@atg.wa.gov>; Worthington, Kate S. (ATG) <kate.worthington@atg.wa.gov>; 'Phil Gordon' <pgordon@HoltzmanVogel.com>; 'Jason Torchinsky' <jtorchinsky@holtzmanvogel.com>; 'Drew Stokesbary' <dstokesbary@chalmersadams.com>; 'Andrew Pardue' <apardue@holtzmanvogel.com>; 'Brennan Bowen' <bbowen@HoltzmanVogel.com>
Cc: Annabelle Harless <aharless@campaignlegalcenter.org>; Aseem Mulji <amulji@campaignlegalcenter.org>; Benjamin Phillips <bphillips@campaignlegalcenter.org>; 'chad@uclavrp.org' <chad@uclavrp.org>; 'Eddie@MorfinLawFirm.com' <Eddie@MorfinLawFirm.com>; 'Erika Cervantes' <ecervantes@maldef.org>; 'Ernest Herrera' <eherrera@maldef.org>; 'Sonni Waknin' <sonni@uclavrp.org>; 'Elizabeth Holcombe' <eholcombe@HoltzmanVogel.com>
Subject: RE: Soto Palmer: clarification motion

Mark,

We certainly did raise the length of trial on Wednesday's call when we discussed this very issue. In any event, if you want us to file a response saying that Plaintiffs misrepresented the State's position, I suppose that is what we will do.

Andrew

Andrew Hughes (he/him)
Section Chief