

1 **I. INTRODUCTION**

2 The Complaint includes among the Defendants in this action Representative Laurie
 3 Jinkins, Speaker of the Washington State House of Representatives (Speaker Jinkins), and
 4 Senator Andrew Billig, Majority Leader of the Washington State Senate (Senator Billig). The
 5 Complaint, however, alleges no facts suggesting that either Speaker Jinkins or Senator Billig
 6 caused the alleged harm for which Plaintiffs seek redress and it seeks no relief against them. Nor
 7 could it. The Legislature as a body, not its individual leaders, enacts laws, including those related
 8 to redistricting. And, as provided in the Washington State Constitution, this is certainly the case
 9 with respect to the challenged legislative maps at issue in the Complaint. This Court should
 10 therefore dismiss Speaker Jinkins and Senator Billig from this action for failure to (quite
 11 literally) state any claim against them on which relief could be granted.

12 **II. BACKGROUND**

13 **A. The Legislature's Narrowly Defined Role in Redistricting**

14 The task of drawing legislative and congressional districts in Washington is vested in the
 15 bipartisan Washington State Redistricting Commission, not in the state Legislature (and
 16 therefore unquestionably not in the Legislature's leadership). Wash. Const. art. II, § 43. The
 17 Commission's authority to draw or revise redistricting plans is exclusive, and the Legislature
 18 lacks such authority. *Id.* art. II, § 43(11). State law assigns few functions to the Legislature, and
 19 fewer still to legislative leadership. None of those functions relate to the relief sought in this
 20 case.

21 The Legislature's role in redistricting is constitutionally limited to four functions:
 22 (1) selection of voting members of the Commission; (2) enacting statutes to implement the
 23 constitutional provision governing the Commission; (3) amending the plan within specific
 24 limitations, in a set time frame, and with two-thirds approval of each legislative chamber; and
 25 (4) potentially reconvening the Commission to modify a redistricting law. *Id.* With the exception
 26 of the first function, all of this authority is vested in the Legislature as a body, and not legislative

1 leadership. And with the exception of the fourth function, the Legislature has concluded them
2 all.

3 **1. Appointment of Commission Members**

4 The Washington Constitution provides for a redistricting commission composed of four
5 voting members and a non-voting chair. The leaders of each of the four legislative caucuses
6 (House and Senate majorities and minorities) appoint the four voting members. *Id.* art. II,
7 § 43(2); Wash. Rev. Code § 44.05.030(1). This means that the Speaker of the House (currently
8 Defendant Jinkins), the House Minority Leader, the Senate Majority Leader (currently
9 Defendant Billig), and the Senate Minority Leader each appoint one voting member to the
10 Commission. Those four Commissioners then jointly select the fifth member, who acts as the
11 nonvoting chair. Wash. Const. art. II, § 43(2); Wash. Rev. Code § 44.05.030(3). All five
12 members were appointed by the end of January 2021, completing the Legislature’s first
13 redistricting function. Complaint, ¶¶ 110–12.

14 **2. Statutory Implementation of Redistricting Commission**

15 The Washington Constitution directs the Legislature to “enact laws providing for the
16 implementation of” the constitutional provision on redistricting, and to appropriate funds for its
17 operation. Wash. Const. art. II, § 43(4). The Legislature concluded function two when it enacted
18 implementing statutes, codified in Wash. Rev. Code 44.05, back in 1983. 1983 Wash. Sess.
19 Laws, ch. 16.

20 **3. The Commission’s Action and Legislative Amendment**

21 When appointed, the Commission is tasked with preparing redistricting plans both for
22 the state Legislature and for Washington’s Congressional districts. Wash. Const. art. II, § 43(1).
23 Those plans are to be completed no later than November 15 of each year ending in one.
24 Wash. Const. art. II, § 43(6). When approved by at least three voting members, the Commission
25 transmits the plans to the Legislature. Wash. Rev. Code § 44.05.100. If the Commission fails to
26 achieve that deadline, then the Constitution directs the Washington Supreme Court to adopt a

1 plan by April 30th of the year ending in two. Wash. Const. art. II, § 43(6); Wash. Rev. Code
2 § 44.05.100(4).

3 The Legislature may only amend the redistricting plans by a two-thirds supermajority
4 vote, and only within the first thirty days of its next legislative session. Wash. Const. art. II,
5 § 43(7). No amendment may include more than two percent of the population of any district.
6 Wash. Rev. Code. § 44.05.100(2). After the 30th day of the legislative session, “the plan, with
7 any legislative amendments, constitutes the state districting law.” Wash. Const. art. II, § 43(7).
8 The plans take effect for the election in the year ending in two, and remain in effect until
9 superseded by the next decennial redistricting. Wash. Rev. Code § 44.05.100(3).

10 District boundaries cannot be changed or established except through the process set forth
11 in article II, section 43, of the state Constitution, as described above. Wash. Const. art. II,
12 § 43(11).

13 In this case, the Commission completed legislative and congressional redistricting plans
14 by the constitutional deadline. *See Order Regarding the Washington State Redistricting*
15 *Commission’s Letter to the Supreme Court on November 16, 2021, and the Commission Chair’s*
16 *November 21, 2021, Declaration*, No. 25700-B-676 (Wash. Sup. Ct. December 3, 2021).¹ The
17 Legislature, within the allotted first thirty days of its 2022 regular session, enacted amendments
18 to the plan. House Concurrent Resolution 4407 (2022) (HCR 4407).²

19 The law provides for the Commission to conclude its business and cease operations after
20 submitting its plan to the Legislature. Wash. Rev. Code § 44.05.110. The Commission is to
21 transmit its records to the Secretary of State, to act as custodian of those records. *Id.* Unless
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24 ¹Available online at: <https://www.courts.wa.gov/opinions/pdf/Order%20Regarding%20Redistricting%20Commission%2025700-B-676.pdf>.

25 ²The legislative history of HCR 4407 is available online at: <https://app.leg.wa.gov/billsummary?BillNumber=4407&Year=2021&Initiative=false>. The text of HCR 4407 is available online at:
26 <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/House%20Passed%20Legislature/4407.PL.pdf?q=20220217164036>.

1 reconvened or extended by the Washington Supreme Court, the Commission ceases to exist on
2 July 1 of each year ending in two. *Id.*

3 **4. The Legislature’s Role in Reconvening the Commission**

4 Finally, the Washington Constitution directs the Legislature to “enact laws providing for
5 the reconvening of a commission for the purpose of modifying a districting law[.]” Wash. Const.
6 art. II, § 43(8). Reconvening the Commission requires the affirmative vote of two-thirds of each
7 house of the Legislature. *Id.* Any modified plan is subject to the same restrictions on legislative
8 amendment as the original plans. *Id.*

9 “If a commission has ceased to exist, the legislature may, upon an affirmative vote in
10 each house of two-thirds of the members elected or appointed thereto, adopt legislation
11 reconvening the commission for the purpose of modifying the redistricting plan.” Wash. Rev.
12 Code § 44.05.120(1). Any vacancies on the reconvened Commission are filled by appointment
13 in the same manner as described above. The reconvened Commission then has no more than
14 sixty days from the effective date of legislation reconvening it to modify the redistricting plans.
15 *Id.* § 44.05.120(4). The Legislature may amend a modified plan, subject to the same limits
16 described above for the initial plan. That is, any amendment requires a two-thirds legislative
17 supermajority, cannot affect more than two percent of the population of any district, and must
18 occur within thirty days of convening the next legislative session. *Id.* § 44.05.120(5). The
19 modified plan becomes effective upon amendment by the Legislature or the expiration of the
20 thirty days without amendment. *Id.* § 44.05.120(6). The Commission then concludes its business
21 and ceases to exist. *Id.* § 44.05.120(7).

22 **B. Procedural Background**

23 Plaintiffs commenced this case to challenge the legislative redistricting plan adopted by
24 the Commission. They challenge, more specifically, the boundaries of legislative district 15 in
25 the Yakima Valley, asserting that it fails to comply with the federal Voting Rights Act.
26

1 Plaintiffs named only three defendants. They named Secretary of State Steven Hobbs,³
 2 Representative Laurie Jinkins (who serves as Speaker of the House), and Senator Andrew Billig
 3 (who serves as Senate Majority Leader). The complaint names neither the Legislature as a body
 4 nor the minority counterparts in leadership to Jinkins and Billig.

5 Plaintiffs request declaratory and injunctive relief. They ask this Court to declare the
 6 Commission’s legislative redistricting plan invalid under the Section 2 of the Voting Rights Act,
 7 and that the plan was intentionally drawn to dilute Latino voting strength in the Yakima Valley.
 8 Complaint, Prayer for Relief, ¶¶ (a), (b). They further seek injunctive relief barring the use of
 9 the redistricting plan in conducting elections. *Id.*, ¶ (c). Finally, they ask the Court to order the
 10 implementation and use of a valid redistricting plan. *Id.*, ¶ (d). Plaintiffs ask for no relief
 11 specifically against Defendants Jinkins and Billig.

12 III. STANDARD OF REVIEW

13 To survive a motion to dismiss, a Complaint must “provide the grounds of [Plaintiffs’]
 14 entitlement to relief [and] requires more than labels and conclusions[.]” *Bell Atlantic Corp. v.*
 15 *Twombly*, 550 U.S. 544, 555 (2007) (internal quotations omitted). A court considering a motion
 16 to dismiss for failure to state a claim “accept[s] as true all factual allegations in the Complaint
 17 and draw[s] all reasonable inferences in favor of the nonmoving party.” *Mujica v. AirScan Inc.*,
 18 771 F.3d 580, 589 (9th Cir. 2014). The Court inquires whether the allegations “plausibly suggest
 19 an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009). Review is generally limited
 20 to the contents of the complaint. *See Depot, Inc. v. Caring for Montanans, Inc.*, 915 F.3d 643,
 21 653 (9th Cir. 2019). Conclusory allegations and unwarranted inferences are insufficient to defeat
 22 a motion to dismiss. *See Pirani v. Slack Techs., Inc.*, 13 F.4th 940, 946 (9th Cir. 2021)
 23 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory
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26 ³Defendant Hobbs answered the Complaint on February 16, 2022. Dkt. #34.

1 statements, do not suffice.”). If the court considers evidence outside the Complaint, it should
 2 treat the motion as one for summary judgment. *See* Fed. R. Civ. P. 12(d).

3 IV. ARGUMENT

4 A. The Complaint Fails to State a Claim on Which Relief Can Be Granted Against 5 Speaker Jenkins or Senator Billig

6 The Complaint explains Speaker Jenkins’ and Senator Billig’s inclusion among the
 7 defendants in this action simply by asserting that, as Speaker of the House and Senate Majority
 8 Leader, respectively, they have “the power to call for a vote to reconvene the Washington
 9 Redistricting Commission for purposes of modifying the redistricting plan.” Complaint, ¶¶ 60,
 10 61. But any legislator may “call for a vote,” and that act alone does not require the Legislative
 11 body to vote affirmatively to reconvene the Commission.

12 The authority to reconvene the Commission is vested by law in the House and the Senate
 13 as bodies; it does not vest that authority in individuals in leadership roles. Wash. Rev. Code
 14 § 44.05.120(1). Despite their leadership roles, Speaker Jenkins and Senator Billig remain simply
 15 individual members of their respective chambers. The House of Representatives is composed of
 16 98 members, with two representatives elected at large from each of 49 legislative districts. *Id.*
 17 § 44.05.090(3). The state Senate is composed of 49 senators, one each from the same 49
 18 legislative districts. *Id.* Far from authorizing individual action by the Speaker or Majority Leader,
 19 both the Washington Constitution and statute require two-thirds supermajorities to reconvene
 20 the Commission. Wash. Const. art. II, § 43(8); Wash. Rev. Code § 44.05.120(1).

21 The Complaint, moreover, fails to even facially assert any claim against Speaker Jenkins
 22 or Majority Leader Billig. The Complaint challenges the validity of the redistricting plan, but
 23 neither defendant drafted that plan or played any role in its adoption. The Commission did that.
 24 The Legislature, as a body and by a two-thirds vote, adopted a limited set of amendments to the
 25 redistricting plan, but neither defendant did that individually. HCR 4407.

1 A pleading stating a claim for relief must contain, “a short and plain statement of the claim
 2 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The Complaint in this case
 3 states no claim for relief against Speaker Jinkins or Senator Billig. It simply asks that the
 4 legislative redistricting plan be declared invalid. Complaint, Prayer for Relief. It mentions calling
 5 for a vote to reconvene the Commission, but requests no relief of that nature (which, in any
 6 event, would not compel the result of reconvening the Commission). Complaint, ¶¶ 60, 61. The
 7 Complaint thus fails quite literally to state any claim for relief upon which relief can be granted
 8 against Speaker Jinkins or Senator Billig. Fed. R. Civ. P. 12(b)(6).

9 Without a claim stated against them, Speaker Jinkins and Senator Billig should be
 10 dismissed. “Factual allegations must be enough to raise a right to relief above the speculative
 11 level.” *Bell Atlantic*, 550 U.S. at 555. The Complaint fails to allege facts that, taken as true, this
 12 Court could impose the requested relief. *Id.* at 556. And the Complaint in this case requests no
 13 relief against Speaker Jinkins or Senator Billig. Having neither requested relief against Speaker
 14 Jinkins and Senator Billig nor pled facts entitling Plaintiffs to relief against them, they should be
 15 dismissed from this case. *See Moss v. U.S. Secret Service*, 572 F.3d 962, 968 (9th Cir. 2009).

16 **B. Neither the Legislature nor Individual Senators and Representatives are Necessary**
 17 **Parties**

18 Nor are Speaker Jinkins and Senator Billig necessary parties to this action. As two sister
 19 circuits have concluded, a state Legislature simply is not a necessary party to the adjudication of
 20 a Voting Rights Act claim, even when the Legislature in fact enacted the redistricting plan at
 21 issue. *Hellebust v. Brownback*, 42 F.3d 1331, 1335 (10th Cir. 1994); *Dickinson v. Indiana State*
 22 *Election Bd.*, 933 F.2d 497, 500–01 (7th Cir. 1991). The Tenth Circuit rejected an argument that
 23 the state legislature was a necessary party to a challenge to the composition of a state board
 24 because the law, not the body that enacted it, was the subject of the challenge. *Hellebust*, 42 F.3d
 25 at 1335. The Seventh Circuit in *Dickinson* also rejected an argument that incumbent legislators
 26 were necessary parties, concluding “[t]here is nothing inherent in a court’s determination of

1 liability under Section Two [of the Voting Rights Act] that requires the legislature’s presence,
 2 even if the legislature has constitutional authority for apportionment.” *Dickenson*, 933 F.2d at
 3 501.

4 In Washington, the Legislature does not have constitutional authority to draw legislative
 5 districts. Wash. Const. art II, § 43. Neither Speaker Jinkins and Senator Billig nor even the
 6 Legislature itself are necessary to the adjudication of this action.

7 **C. Plaintiffs’ Suit Against Jinkins and Billig is Inconsistent with Bipartisan Nature of**
 8 **Legislature**

9 For reasons described above, Speaker Jinkins and Senator Billig should be dismissed.
 10 But if for any reason the Court denies that relief, the Court should thereafter entertain a motion
 11 to intervene on the part of their legislative counterparts. While Speaker Jinkins serves as Speaker
 12 of the House, Representative J.T. Wilcox serves as her counterpart, the House Minority Leader.
 13 And while Senator Billig serves as Senate Majority Leader, Senator John Braun serves as Senate
 14 Minority Leader. Both Jinkins and Billig are members of their respective Democratic Caucuses,
 15 while Wilcox and Braun are members of their bodies’ Republican Caucuses.⁴

16 The case does not require the participation of *any* members of the Legislature as parties.
 17 *See supra* Part IV, B. But if the leaders of two caucuses, both affiliated with the same political
 18 party, are included, then the leaders of all four caucuses should be included as well. All four
 19 leaders, not just the two who are named, have the capacity to request legislative action, a power
 20 they in fact share with every one of their legislative colleagues in both bodies. *See* Complaint,
 21 ¶¶ 60, 61. And notably the Commission, the only body constitutionally empowered to adopt or
 22 revise a redistricting plan, is bipartisan by constitutional design. Wash. Const. art. II, § 43.
 23 Litigating a plan with the participation of leaders from the same party, while excluding those
 24 from the other party, may lead to an adjudication based on less than a full consideration of

25 _____
 26 ⁴Information concerning the composition of the Washington State Legislature is available online at:
<https://leg.wa.gov/>.

1 relevant issues and could improperly suggest an inference about the character of this proceeding
2 that both the parties and the Court should seek to avoid.

3 **V. CONCLUSION**

4 For these reasons, Senator Billig and Speaker Jinkins respectfully request that this Court
5 grant their motion to dismiss, dismissing them as parties to this action.

6 DATED this 23rd day of February 2022.

7
8 ROBERT W. FERGUSON
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9
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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 23rd day of February 2022, at Olympia, Washington.

/s/ Jeffrey T. Even
JEFFREY T. EVEN, WSBA #20367
Deputy Solicitor General

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