No. 23-467

In the Supreme Court of the United States

BENANCIO GARCIA III,

APPELLANT,

v.

STEVEN HOBBS, WASHINGTON SECRETARY OF STATE, AND STATE OF WASHINGTON,

APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

MOTION TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

For decades, this Court has held that when a three-judge district court dismisses a case on justiciability grounds, such as a lack of standing, the proper avenue for appeal is to the Courts of Appeal, not to invoke this Court's appellate jurisdiction under 28 U.S.C. § 1253. In this case, the three-judge district court dismissed plaintiff's claim on justiciability grounds, finding the claim moot because the plaintiff had already received the relief he sought—invalidation of Washington Legislative District 15—from another case. Plaintiff thus faced no actual or imminent injury.

The questions presented are:

1. Whether this Court should overrule its precedent holding that it lacks jurisdiction under 28 U.S.C. § 1253 to review a direct appeal where the three-judge district court dismissed the case on justiciability grounds.

2. If the Court concludes that it has jurisdiction, whether this Court should affirm the three-judge district court's dismissal of the case as moot because the plaintiff had already received the relief he requested through the ruling in another case, eliminating any claim of injury or redressability in this case.

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INTRODUCTION

Plaintiff Benancio Garcia asks this Court to overrule its own precedent just so that the Court can then decide whether his case is moot, which it clearly is. He makes this audacious request even though he concedes that he will lose on the merits in the lower court if the case is not moot, and even though his requested relief cannot possibly impact Washington's 2024 elections. The Court should decline to overturn its precedent just to reach Garcia's academic question.

After a bipartisan commission adopted Washington's 2020 redistricting plan and the Washington Legislature ratified it in an overwhelming bipartisan vote, a group of plaintiffs filed a Voting Rights Act case (*Soto Palmer*) challenging Legislative District 15 in the plan. They claimed that LD 15 illegally diluted Hispanic voting strength and should be redrawn. Months later, Garcia filed this case, claiming that the same district had been racially gerrymandered and should be redrawn.

The district court in *Soto Palmer* held that LD 15 violated Section 2 of the VRA and must be redrawn. After the Legislature declined to propose a new plan, the court began the process of adopting a plan itself. All parties in that case and this one have stipulated that to comply with Washington law and logistical requirements, a new plan must be finalized by March 25, 2024, to be used in the 2024 election.

After the *Soto Palmer* court invalidated LD 15 and ordered that it be redrawn, the district court in this case dismissed Garcia's claim as moot, concluding

that Garcia's claimed injury had already been remedied. Garcia then filed this appeal.

This Court should dismiss Garcia's appeal for lack of jurisdiction. In *Gonzalez v. Automatic Employees Credit Union*, 419 U.S. 90 (1974), this Court unanimously held that a dismissal on jurisdictional grounds falls outside this Court's appellate jurisdiction under 28 U.S.C. § 1253. The district court dismissed this case on jurisdictional grounds, finding the case moot. *Gonzalez* therefore controls. Garcia responds that this Court either already has overruled *Gonzalez sub silentio*, that the Court should overrule *Gonzalez* now, or that *Gonzalez* is inapposite. These claims are untenable.

If the Court nonetheless concludes that it has jurisdiction, it should affirm that Garcia's claim is moot. His complaint asked that LD 15 be invalidated and redrawn. The *Soto Palmer* court ordered exactly that, so there was no remaining injury the court in this case could redress. Garcia argues that his case remains a live controversy because the *Soto Palmer* decision might be reversed. But that possibility comes nowhere close to showing the actual or certainly impending harm this Court requires for standing.

Mr. Garcia's request that the Court overrule precedent and revive his moot claim is particularly weak because it is rooted in baseless policy concerns. He claims that the Court must overrule *Gonzalez* and review mootness holdings to prevent "docket games." But he offers no evidence that any such games

occurred here. Because *Soto Palmer* had resolved Garcia's asserted injury on statutory grounds, the district court here concluded that there was no need to reach his constitutional claim. This Court routinely takes the same approach. This is not gamesmanship.

There is also no practical reason for this Court to review this decision now, rather than leaving review to the Court of Appeals, as *Gonzalez* dictates. Even if the Court overturned *Gonzalez*, reviewed Garcia's claim, and reversed the lower court's mootness holding, any such holding would come well after a new map has to be adopted for the 2024 election by the *Soto Palmer* court. And even if this Court somehow managed to review and issue an opinion before March 25, 2024, Garcia concedes that he will lose his racial gerrymandering claim on the merits on remand, so there still would be no impact on the 2024 election.

In short, Garcia asks this Court to overturn precedent just to decide his case, his case is clearly moot, and even if this Court revived it, there would be no impact. The Court should dismiss or affirm.[1]

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[1] Consistent with his position throughout this litigation, Washington Secretary of State Steve Hobbs takes no position on the merits of plaintiff's claim. The Secretary's interest in this litigation is to ensure that election officials are able to meet election deadlines. If new maps are to be implemented for the 2024 election cycle, those maps must be finalized and transmitted to counties by March 25, 2024, as all parties have stipulated. *See* ECF No. 64, at 12 ¶ 85, *Garcia v. Hobbs*, No. 3:22-cv-05152-RSL-DGE-LJCV (W.D. Wash. May 24, 2023) (admitted fact in parties' agreed proposed pretrial order). The Secretary takes no further position on the motion to dismiss or affirm.

OPINION BELOW

The opinion of the district court dismissing the case as moot (App. A1-A47) is not yet published in the *Federal Supplement* but is available at *Garcia v. Hobbs*, No. 3:22-cv-05152-RSL-DGE-LJCV, 2023 WL 5822461 (W.D. Wash. Sept. 8, 2023).

JURISDICTION

As detailed below, this Court lacks jurisdiction. Under 28 U.S.C. § 1253, this Court has appellate jurisdiction over orders "granting or denying . . . an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges." The order appealed from does not grant or deny an injunction, but dismisses the case as moot. The order is a "final decision" over which the court of appeals, not this Court, has jurisdiction.

STATEMENT

A. The Washington Redistricting Commission and Adoption of Legislative District 15

Article II, section 43 of the Washington Constitution provides for a bipartisan Washington State Redistricting Commission to draw state legislative and congressional districts. The Commission consists of four voting members and one non-voting chairperson. *See* Wash. Const. art. II, § 43(2). The voting members are appointed by the legislative leaders of the two largest political parties in each house of the Legislature. Wash. Const. art. II, § 43(2). For the 2021 redistricting cycle, the four

voting Commissioners were April Sims (appointed by the House Democratic Caucus), Brady Piñero Walkinshaw (appointed by the Senate Democratic Caucus), Paul Graves (appointed by the House Republican Caucus), and Joe Fain (appointed by the Senate Republican Caucus).

Under Washington law, the Commission must agree, by majority vote, to a redistricting plan by November 15 of the redistricting year, and then transmit the plan to the Legislature. Wash. Rev. Code § 44.05.100(1); Wash. Const. art. II, § 43(2). Thus, the Commission cannot propose a plan without bipartisan agreement amongst the Commissioners. Upon submission of the plan by the Commission, the Legislature has 30 days to amend the plan by a two-thirds vote. Wash. Rev. Code § 44.05.100(2). The redistricting plan becomes final upon the Legislature's approval of any amendment or after expiration of the thirty-day window for amending the plan, whichever occurs sooner. Wash. Rev. Code § 44.05.100(3).

Washington's redistricting statute sets forth requirements for redistricting plans, including that district lines coincide with boundaries of political subdivisions to the extent possible, that communities of interest be kept together as much as practicable, that city and county splits be kept to a minimum, and that districts be contiguous and compact. Wash. Rev. Code § 44.05.090.

In addition to state-law requirements, the 2021 Commission was the first in State history to grapple with Section 2 of the Voting Rights Act (VRA). The 2020 Census showed dramatic growth of Washington's Hispanic population, centered in the Yakima Valley region in central Washington. ECF No. 64, at 3-4, [Proposed] Pretrial Order, *Garcia v. Hobbs*, No. 3:22-cv-05152-RSL-DGE-LJCV (W.D. Wash. May 24, 2023).[2] In the years leading up to 2021, three separate cases found violations of the federal Voting Rights Act or the Washington Voting Rights Act related to local elections in that region. In *Montes*, a federal district court concluded that Yakima's at-large voting system for city council elections violated Section 2 of the VRA. *Montes v. City of Yakima*, 40 F. Supp. 3d 1377 (E.D. Wash. 2014). The court reviewed evidence regarding the three *Gingles* factors and concluded that each was satisfied with respect to Latino voters in Yakima. *Id.* at 1390-1407. The Court also found that the totality of the circumstances demonstrated that the City's electoral process was not equally open to Latino voters. *Id.* at 1408-14. In *Glatt v. City of Pasco*, a challenge to Pasco's at-large voting system, a federal district court entered a consent decree in which the parties stipulated to each *Gingles* factor as well as a finding that the totality of the circumstances showed an exclusion of Latinos from meaningfully

[2] Filings from the *Garcia v. Hobbs* district court docket will be short cited as *Garcia*, ECF No. __. Filings from the *Soto Palmer* district court docket will be short cited as *Soto Palmer*, ECF No. __.

participating in the political process. *See* ECF No. 16 ¶¶ 15-22, Partial Consent Decree, *Glatt v. City of Pasco*, No. 4:16-cv-05108-LRS (E.D. Wash. Sept. 2, 2016); *see also* ECF No. 40, at 29, Mem. Op. and Order, *Glatt v. City of Pasco*, No. 4:16-cv-05108-LRS (E.D. Wash. Jan. 27, 2017). And in *Aguilar v. Yakima County*, No. 20-2-0018019 (Kittitas Cnty. Super. Ct.), a challenge to the at-large voting system used in Yakima County, the parties entered and the court approved a settlement agreement finding that the conditions for a violation of the Washington Voting Rights Act, including a showing of racially polarized voting, had been met in Yakima County. *Garcia*, ECF No. 64, at 11.

On September 21, 2021, shortly after the Commission received Census data, and shortly after the *Aguilar v. Yakima County* settlement, the four voting Commissioners publicly released their first proposed legislative maps. *Garcia*, ECF No. 64, at 8, 11. The Senate Democratic Caucus then retained Dr. Matt Barreto of the UCLA Voting Rights Project to evaluate the extent of racially polarized voting in the Yakima Valley and assess the proposed maps' compliance with the VRA. App. A93. In his analysis, Dr. Barreto concluded that there was "clear" evidence "of racially polarized voting" in the Yakima Valley. App. A109. He opined that to comply with the VRA, the Commission needed to include a district with a majority-Hispanic citizen voting age population (CVAP) in that area that allowed Latino voters to elect candidates of their choice. App. A110-A117.

Following this report, Commissioners Sims and Walkinshaw released new proposed maps designed to better comply with the VRA by increasing the Hispanic CVAP in the Yakima Valley district that eventually became LD 15, while also improving on the previous maps in other respects. *See* Trial Exs. 196, 197; *see also Garcia*, ECF No. 73 (Trial Tr.), at 272:17–273:13; Trial Ex. 200; Trial Ex. 195. Meanwhile, Commissioners Fain and Graves obtained a legal opinion from lawyers at Davis Wright Tremaine LLP, who opined that a majority-minority district in the Yakima Valley was not legally necessary. App. A119. The opinion noted that it was primarily a legal analysis and that the authors had not "conduct[ed] factual research regarding demographic trends, voting behavior, [or] election results[.]" App. A119.

At trial, each of the voting Commissioners testified as to their priorities in negotiating and drafting maps. Each Commissioner prioritized complying with the Voting Rights Act, though as trial made clear, they differed in their understanding of what that meant. *Garcia*, ECF No. 73 (Trial Tr.), at 343:9–11; Trial Ex. 200; *Garcia*, ECF No. 75 (Trial Tr.), at 757:24–758:1; ECF No. 74 (Trial Tr.), at 434:16–435:1. And finally, befitting a bipartisan negotiation, the Commissioners sought to gain (or at least not lose) partisan advantage through the negotiations. *Garcia*, ECF No. 75 (Trial Tr.), at 707:20–23.

As the deadline for finalizing maps approached, the Commissioners negotiated extensively in an effort to reach bipartisan compromise, with Commissioners Sims and Graves primarily tasked with negotiating the legislative districts. Each Commissioner remained committed to their overarching goals, and the sticking points, including with respect to LD 15, primarily centered on partisan performance. *Garcia*, ECF No. 75 (Trial Tr.), at 702:12–704:19. The racial makeup of the district was just one of several factors in the negotiations over LD 15. *See, e.g.*, *Garcia*, ECF No. 75 (Trial Tr.), at 756:20–757:18; *Garcia*, ECF No. 73 (Trial Tr.), at 282:4–21; *see also* App. A5 n.4 (summarizing Commissioners' testimony).

Following a chaotic final day and evening of negotiations, the Commissioners ultimately voted unanimously to approve a legislative redistricting plan just before midnight. The plan consisted primarily of an agreed set of partisan metrics, which was then translated by staff into a map. *Garcia*, ECF No. 73 (Trial Tr.), at 225:20–226:22, 326:11–21; ECF No. 74 (Trial Tr.), at 495:10–16; ECF No. 75 (Trial Tr.) at 714:9–715:8. On November 16, 2021, the Commission transmitted the final map to the Legislature. *Garcia*, ECF No. 64 ¶ 73. In the final map, LD 15 is 73% Hispanic and, according to estimates based on the 2020 American Community Survey, approximately 51.5% Hispanic by CVAP. *Garcia*, ECF No. 64 ¶ 76.

The Legislature exercised its statutory prerogative to make minor amendments to the Plan. The Legislature made changes to LD 15 without altering its demographic make-up. *Garcia*, ECF No. 64 ¶ 75. On February 8, 2022, the Legislature

passed House Concurrent Resolution 4407, adopting the amended redistricting plan. H. Con. Res. 4407, 67th Leg., Reg. Sess. (Wash. Feb. 2, 2022) (enacted). Upon passage, the Legislature's amended redistricting plan became State law. Wash. Rev. Code § 44.05.100.

B. The *Soto Palmer* and *Garcia* Lawsuits

On January 19, 2022, plaintiffs in *Soto Palmer v. Hobbs* filed suit, alleging that LD 15 diluted Hispanic voting strength in violation of Section 2 of the Voting Rights Act. ECF No. 1, Complaint for Declaratory and Injunctive Relief, *Soto Palmer v. Hobbs*, No. 3:22-cv-05035-RSL (W.D. Wash. Jan. 19, 2022). The case was assigned to Judge Robert Lasnik of the Western District of Washington. Nearly two months later, on March 15, 2022, Garcia filed this lawsuit, claiming that LD 15 was a racial gerrymander in violation of the Fourteenth Amendment, and requested a three-judge panel. His case was assigned to Judge Lasnik, Chief Judge David Estudillo of the Western District of Washington, and Judge Lawrence VanDyke of the Ninth Circuit.

Two weeks after *Garcia* was filed, three individuals—represented by the same counsel as Garcia—moved to intervene in *Soto Palmer* to defend LD 15 against the *Soto Palmer* Plaintiffs' Section 2 claims. *Soto Palmer*, ECF No. 57. On May 6, 2022, the *Soto Palmer* district court granted permissive intervention to Intervenor-Defendants, *Soto Palmer*, ECF No. 69, and ordered the State of Washington joined as a party "to ensure that the Court has the power to provide the relief plaintiffs request," *Soto Palmer*, ECF No. 68, at 5.

Since that time, the two cases have proceeded in tandem as essentially a single dispute with three parties: (1) the *Soto Palmer* Plaintiffs, challenging LD 15 under Section 2 of the Voting Rights Act; (2) the State of Washington; and (3) the *Garcia* Plaintiff/*Soto Palmer* Intervenors, challenging LD 15 under the Fourteenth Amendment and simultaneously/alternatively arguing that LD 15 complied with Section 2.[3] But because *Soto Palmer* was filed first, the cases proceeded on a staggered schedule, with *Soto Palmer* going first. After Judge Lasnik initially continued the case schedule in *Soto Palmer*, the *Garcia* parties jointly requested (and received) a scheduling order "extending all case dates to approximately one month after the corresponding dates in *Soto Palmer*[.]" *Garcia*, ECF No. 26, at 6. Later, following dueling motions by the two sets of plaintiffs aimed at streamlining the cases, Judge Lasnik found "that judicial efficiency [would] best be served by hearing the Section 2 and the equal protection claims together," and the court thus continued the *Soto Palmer* trial to coincide with the *Garcia* trial. *Soto Palmer*, ECF No. 136, at 5. However, to preserve the priority of *Soto Palmer*, Judge Lasnik explained that "[a]t the close of evidence at the consolidated trial, the undersigned will issue a decision on the Section 2 claim, and the three-judge district court will *then* consider the constitutional claim." *Soto Palmer*, ECF No. 136, at 5[4] (emphasis added). Ultimately, the two

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[3] The Secretary of State has not taken a position on the merits of either case.

[4] As Garcia notes, Judge Lasnik's order goes on to say that "[j]udgments in the two matters will be issued on the same day so that the appeals, if any, can proceed

cases were heard together in a joint trial, with the first day consisting of *Soto Palmer*-only evidence, heard by Judge Lasnik, and the remaining days consisting of joint evidence for both *Soto Palmer* and *Garcia* heard by the three-judge panel (which included Judge Lasnik). *Soto Palmer*, ECF Nos. 187, 198-201 (minute entries); *Garcia*, ECF Nos. 68-70 (minute entries).

Trial ended June 8, 2023, with written closings due July 12, 2023. *Garcia*, ECF No. 70.

C. The District Court's Order and the Three-Judge Panel's Decision

On August 10, 2023, Judge Lasnik issued a Memorandum of Decision in *Soto Palmer*, finding that LD 15 had the effect of discriminating against Hispanic voters by denying them the equal right to elect candidates of their choice. App. A51. Following this Court's reaffirmance of the *Gingles* framework in *Allen v. Milligan*, 599 U.S. 1 (2023), Judge Lasnik analyzed the *Gingles* factors and concluded that the *Soto Palmer* Plaintiffs had satisfied them all. *Soto Palmer v. Hobbs*, No. 3:22-cv-05025-RSL, 2023 WL 5125390, at *3-6 (W.D. Wash. Aug. 10, 2023). The court then undertook the totality of the circumstances analysis, finding that seven of the nine Senate Factors

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together." Jurisdictional Statement at 7-8 (alteration in original). While the State cannot say for sure why that plan did not come to fruition, Judge Lasnik presumably could not have known that one panel member would author a lengthy dissent that likely slowed down the process of issuing the decision in *Garcia*. App. A11-A47. Garcia's assertion that the decisions were timed to advance some ulterior motive is pure speculation made without citation to, or support in, the record. *See* Jurisdictional Statement at 7-8.

supported "the conclusion that the bare majority of Latino voters in LD 15 fails to afford them equal opportunity to elect their preferred candidates." *Id.* at *11.

Pursuant to the *Soto Palmer* district court decision (and subsequent orders), the parties are currently engaged in the remedial process aimed at adopting a new map for LD 15 and surrounding districts. All parties have stipulated that the new map must be adopted by March 25, 2024, in order to be used in the 2024 election, given Washington's statutory deadlines for candidate filing and other aspects of election administration. App. A89; *Garcia*, ECF No. 64, at 12 ("Should the Court determine a new legislative district map must be drawn as a remedy, March 25, 2024 is the latest date a finalized legislative district map must be transmitted to counties without significantly disrupting the 2024 election cycle."). On December 1, 2023, as ordered by Judge Lasnik, the *Soto Palmer* Plaintiffs proposed five remedial maps to the district court, and the parties submitted three candidates to serve as special master. *Soto Palmer*, ECF Nos. 244-245.

Meanwhile, the *Soto Palmer* Intervenors appealed Judge Lasnik's decision on the merits, and filed a Petition for Certiorari before Judgment in this Court. *Trevino v. Soto Palmer*, U.S.S.C. No. 23-484.

The *Garcia* district court issued its opinion September 8, 2023, dismissing this case as moot. App. A1-A11. As the majority explained, Garcia sought declaratory relief that LD 15, as enacted, was unlawful, "an injunction 'enjoining [Washington] from enforcing or giving any effect to the boundaries of []

[LD 15],'" and an order requiring "a new legislative map be drawn." App. A2-A3 (first alteration ours) (quoting Garcia's Amended Complaint). But Judge Lasnik's decision invalidating LD 15 and ordering a new VRA-compliant map meant "the Court cannot provide any more relief to Plaintiff." App. A3; *see also* App. A7 ("LD 15 will be redrawn and will not be used in its current form for any future election. The *Soto Palmer* court has therefore granted Plaintiff complete relief for purposes of our mootness analysis."). And the court further explained that "Plaintiff does not assert that any new district drawn by the Washington State Redistricting Commission . . . would be a 'mere continuation[] of the old, gerrymandered district[].'" App. A3 (ellipsis ours) (quoting *North Carolina v. Covington*, 138 S. Ct. 2548, 2553 (2018)). The court therefore dismissed Plaintiff's claims under Article III of the U.S. Constitution without addressing the merits or ruling on Garcia's requested injunction. App. A2-A11. Judge VanDyke dissented, disagreeing with the majority's mootness conclusion. App. A11-A47.

REASONS FOR DISMISSAL OR AFFIRMANCE

A. This Court Lacks Jurisdiction Over This Appeal Under *Gonzalez v. Automatic Employee Credit Union*

This Court lacks jurisdiction over this appeal. This Court's mandatory appellate jurisdiction is narrow, extending only to orders of three-judge district courts "granting or denying . . . an interlocutory or permanent injunction[.]" 28 U.S.C. § 1253. Fifty years ago, in *Gonzalez*, 419 U.S. at 100, this Court unanimously held that a dismissal on

jurisdictional grounds falls outside of this Court's mandatory appellate jurisdiction. The three-judge district court here dismissed this case on jurisdictional grounds, finding the case moot. Garcia claims that this Court must review that conclusion, arguing that the Court either already has overruled *Gonzalez* without saying so, that the Court should overrule *Gonzalez* now, or that *Gonzalez* is inapposite. None of these contradictory claims withstands scrutiny. Dismissals based on mootness follow the normal appellate path of review by the Courts of Appeals, not mandatory review here.

For decades, this Court has held that "its jurisdiction under the Three-Judge Court Act is to be narrowly construed since 'any loose construction of the requirements of (the Act) would defeat the purposes of Congress * * * to keep within narrow confines [this Court's] appellate docket.'" *Goldstein v. Cox*, 396 U.S. 471, 478 (1970) (last alteration ours) (quoting *Phillips v. United States*, 312 U.S. 246, 250 (1941)).

This Court has specifically made clear that it has no jurisdiction to hear a direct appeal from a case dismissed on standing or other jurisdictional grounds. *Gonzalez*, 419 U.S. at 100; *see also MTM, Inc. v. Baxley*, 420 U.S. 799 (1975) (declining direct review where three-judge district court dismissed based on *Younger* abstention doctrine). The *Gonzalez* Court reasoned that where a three-judge panel could have dissolved itself and left the dismissal to a single-court judge, the decision to dismiss rather than dissolve was one of "mere convenience or happenstance[,]" and that its "mandatory docket must rest on a firmer foundation[.]" *Gonzalez*, 419 U.S. at 101. After

recognizing that a "three-judge court is not required where the district court itself lacks jurisdiction of the complaint or the complaint is not justiciable in the federal courts[,]" the *Gonzalez* Court found it had no jurisdiction to hear a direct appeal from a dismissal based on lack of standing. *Gonzalez*, 419 U.S. at 100 (citing *Ex parte Poresky*, 290 U.S. 30, 31 (1933)).

Gonzalez controls here. Just as in *Gonzalez*, this case was dismissed by a three-judge panel on jurisdictional grounds. *See Gonzalez*, 419 U.S. at 93. Although the question in *Gonzalez* involved standing, "[m]ootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 68 n.22 (1997) (internal quotation marks omitted) (quoting *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)); *see also Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 72 (2013) (holding that if a case becomes moot, "the action can no longer proceed and must be dismissed"). A federal court—whether a single judge or a three-judge panel—loses jurisdiction over a case when the case becomes moot, and cannot properly retain jurisdiction and decide the case. *See Iron Arrow Honor Soc'y v. Heckler*, 464 U.S. 67, 70 (1983) ("Federal courts lack jurisdiction to decide moot cases because their constitutional authority extends only to actual cases or controversies.").

If any doubt remained about how the holding in *Gonzalez* applied to a case dismissed for mootness, as here, *Gonzalez* itself answers that specific question by

citing with approval a case just like this one. *Gonzalez*, 419 U.S. at 100 n.18 (citing *Rosado v. Wyman*, 304 F. Supp. 1354 (E.D.N.Y.), *appeal dismissed for want of jurisdiction*, 395 U.S. 826 (1969)). In *Rosado*, a three-judge panel dissolved itself when the issue presented became moot, and this Court dismissed an attempted direct appeal. *Rosado*, 304 F. Supp. at 1356; *Rosado*, 395 U.S. 826. *Gonzalez* thus not only articulates a basic principle that controls here, but also used as an example the specific facts of this case.

Garcia attempts to avoid *Gonzalez* in several ways. None is convincing.

1. Contrary to Appellant's Claims, This Court Has Not Silently Overruled *Gonzalez*

Garcia first makes the audacious argument that this Court's decision in *Abbott v. Perez*, 138 S. Ct. 2305 (2018), silently overruled *Gonzalez*. He claims that *Abbott* created a no-exceptions rule requiring this Court's review any time a three-judge district court dismisses a case or its decision otherwise results in the failure to issue an injunction. Jurisdictional Statement at 9. This argument overstates *Abbott* and ignores this Court's principle that it does not overturn its precedent *sub silentio*.

In *Abbott*, this Court addressed a three-judge court order that had the practical effect of enjoining the use of Texas's legislatively enacted districting plan, even though the district court did not use the term "injunction." *Abbott*, 138 S. Ct. at 2321-22. In its analysis, this Court explained that § 1253 jurisdiction does not turn on whether a district court specifically

labels an order an injunction or a denial thereof, but rather whether an order "has the same practical effect as one granting or denying an injunction." *Abbott*, 138 S. Ct. at 2320-21 (extending to § 1253 the "'practical effect' inquiry" applied to 28 U.S.C. 1292(a)(1) by *Carson v. American Brands, Inc.*, 450 U.S. 79 (1981)). The Court then explained that the order before it had the effect of granting an injunction because "the three-judge court did not intend to allow the elections to go ahead under the plans it had just condemned." *Abbott*, 138 S. Ct. at 2322.

The *Abbott* Court did not address *Gonzalez*, let alone suggest that it was overturning it. Nor did its holding or rationale give any reason to question the underpinnings of *Gonzalez*, which adopted a straightforward principle that it makes no sense to review a justiciability decision of a three-judge court that could have been made by a single-judge court. *See Gonzalez*, 419 U.S. at 101.

To the contrary, *Abbott* repeatedly emphasized how narrow its holding was. The Court "reiterate[d] that § 1253 must be strictly construed." *Abbott*, 138 S. Ct. at 2324. The Court also emphasized that "[o]ur holding here will affect only a small category of additional cases." *Id.* at 2323-24. These statements are irreconcilable with Garcia's view that *Abbott* created a new bright-line rule overturning decades of case law and substantially expanding this Court's mandatory appellate jurisdiction.

If all of that were not enough, Garcia's argument that *Abbott* overturned *Gonzalez* and similar decisions of this Court without even hinting that it was doing so also flies in the face of this Court's

principle that it "does not normally overturn, or so dramatically limit, earlier authority *sub silentio*." *Shalala v. Illinois Council on Long Term Care, Inc.*, 529 U.S. 1, 18 (2000). The Court should reject Garcia's claim that it ignored its own precedent and decisional principles when it decided *Abbott*.

2. Appellant Offers No Persuasive Reason to Overturn *Gonzalez* Now, and the Rule He Advances Makes No Sense

Lacking any plausible argument that *Abbott* overruled *Gonzalez*, Garcia suggests that this Court should overrule *Gonzalez* now. But he offers no compelling reason to do so, and the rule he advocates leads to bizarre consequences.

Garcia never even attempts to explain why *Gonzalez* was wrongly decided or to satisfy this Court's criteria for overturning precedent. Instead, Garcia's primary objection to *Gonzalez* appears to be the unsupported notion that it allows lower courts to use "strategic docket management" to avoid this Court's review. Jurisdictional Statement at 10. His brief is replete with allegations that the three-judge panel here engaged in such "docket games to divest this Court of immediate appellate jurisdiction[.]" Jurisdictional Statement at 11. But he offers no evidence to support this charge or explanation of why the lower court would have wanted that outcome.

By deciding the statutory VRA question first and thereby negating the need to decide Garcia's constitutional claim, the lower court was following this Court's direction and example. This Court has repeatedly held that it normally "'will not decide a

constitutional question if there is some other ground upon which to dispose of the case[.]'" *Nw. Austin Mun. Util. Dist. 1 v. Holder*, 557 U.S. 193, 205 (2009) (quoting *Escambia County v. McMillan*, 466 U.S. 48, 51 (1984)). And this Court has decided VRA claims without reaching constitutional claims in many redistricting cases. For example, in *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 442 (2006), this Court invalidated one of Texas's congressional districts based on Section 2 of the VRA, and therefore declined to address appellants' constitutional claims. *See also Thornburg v. Gingles*, 478 U.S. 30, 38 (1986) (noting that the district court held North Carolina's legislative redistricting plan violated Section 2, and thus did not reach the challengers' Fourteenth and Fifteenth Amendment claims); *Caster v. Merrill*, No. 2:21-cv-1536-AMM, 2022 WL 264819, at *84 (N.D. Ala. Jan. 24, 2022)"), (issuing a preliminary injunction on statutory grounds, and because Alabama's congressional elections would thus not occur based on a map that was allegedly unconstitutional, declining "to decide the constitutional claims asserted"), *aff'd sub nom. Allen v. Milligan*, 599 U.S. 1 (2023).

Garcia's argument, taken to its logical conclusion, would also result in mandatory jurisdiction in this Court for every order of a three-judge court dismissing a case in which an injunction is sought. In his black-and-white world, an injunction is either granted or denied, no matter how divorced from the merits the decision of the three-judge court is. Jurisdictional Statement at 10. His rule would mean, for example, mandatory review in this Court of a three-judge panel decision where the district court

dismissed the case as moot because the plaintiff died, dismissed the case because the statute of limitations had expired, or dismissed a case because the plaintiffs named the wrong defendants. This extreme result is contrary to this Court's frequent admonition that its jurisdiction under § 1253 is to be construed "narrowly." *Abbott*, 138 S. Ct. at 2324; *Goldstein*, 396 U.S. at 478. And it is contradicted by *Abbott*, the very case relied on by Garcia: "It should go without saying that our decision does not mean that a State can always appeal a district court order holding a redistricting plan unlawful. A finding on liability cannot be appealed unless an injunction is granted or denied, and in some cases a district court may see no need for interlocutory relief." *Abbott*, 138 S. Ct. at 2324.

In short, Garcia offers no basis in logic, precedent, or policy to overrule *Gonzalez*.

3. Appellant's Attempts to Distinguish *Gonzalez* Fail

Garcia's final attempt to avoid *Gonzalez* is a failed attempt to distinguish the case. He offers two supposed grounds, but neither withstands scrutiny.

First, Garcia argues that *Gonzalez* involved a lack of standing from the outset of a case, while this case involves a finding of mootness, Jurisdictional Statement at 10-11, but there is no logical reason why that should matter. As discussed above, mootness is merely the doctrine of standing set in a time frame, and courts lack jurisdiction to decide moot cases just

as they lack jurisdiction where standing is absent. *Arizonans for Official English*, 420 U.S. at 68 n.22; *Iron Arrow Honor Soc'y*, 464 U.S. at 70. Garcia implies that mootness is a more complicated and easily manipulated doctrine than standing, so district courts cannot be trusted with such decisions. Jurisdictional Statement at 4, 11. But even if that policy concern were relevant, standing findings are often highly complicated and contested,[5] and mootness is often quite obvious, as when a redistricting plaintiff moves out of the district, dies, or otherwise exits the litigation.

Garcia also attempts to avoid *Gonzalez* by arguing that because *Gonzalez* did not create "a per se rule that only merits dismissals are directly reviewable by this Court[,]" that must mean that *some* jurisdictional dismissals remained appealable. Jurisdictional Statement at 12. But *Gonzalez*'s understandable reluctance to create a per se rule regarding all non-merits dismissals does not undo the opinion's actual reasoning and holding. In reality, *Gonzalez* did establish a bright-line rule that controls here: "We hold, therefore, that when a three-judge

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[5] *See, e.g.*, *Hollingsworth v. Perry*, 570 U.S. 693, 705-15 (2013) (holding that initiative sponsors granted leave to intervene in the trial court to defend initiative lacked standing to appeal adverse ruling striking down initiative, notwithstanding answer to certified question from California Supreme Court suggesting initiative sponsors would have standing under California law); *Massachusetts v. EPA*, 549 U.S. 497, 521 (2007) (holding Massachusetts had standing to sue EPA over failure to regulate greenhouse gases; dissenting opinion noting past decisions' allowance of "manipulable" standing requirements).

court denies a plaintiff injunctive relief on grounds which, if sound, would have justified dissolution of the court as to that plaintiff . . . review of the denial is available only in the court of appeals." *Gonzalez*, 419 U.S. at 101. Whether it is possible to dismiss a case on non-merits grounds that would fail this test is a question for academics to ponder, or possibly some future case, but it does not help Garcia. Here, *Gonzalez* itself establishes that dismissal for lack of standing or other justiciability grounds such as mootness fall outside this Court's mandatory jurisdiction. *Id.* at 100.

In short, the Court should dismiss Garcia's appeal because it lacks jurisdiction.

B. The District Court Correctly Dismissed This Case as Moot

Even if this Court determined that it had appellate jurisdiction under 28 U.S.C. § 1253 despite the case having been dismissed on justiciability grounds, the Court should summarily affirm the district court because it correctly dismissed the case as moot.

"A case becomes moot—and therefore no longer a 'Case' or 'Controversy' for purposes of Article III—'when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.'" *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (quoting *Murphy v. Hunt*, 455 U.S. 478, 481 (1982) (per curiam)). "Throughout the litigation, the party seeking relief must have suffered, or be threatened with, an actual injury traceable to the

defendant and likely to be redressed by a favorable judicial decision." *United States v. Juvenile Male*, 564 U.S. 932, 936 (2011) (internal quotation marks omitted); *Alvarez v. Smith*, 558 U.S. 87, 92 (2009) (explaining that a plaintiff must retain a personal stake "'at all stages of review, not merely at the time the complaint is filed'"). Thus, if an intervening circumstance during the litigation addresses the plaintiff's alleged injury and deprives him of a personal stake in the lawsuit's outcome, the case is moot. *Moore v. Harper*, 600 U.S. 1, 14 (2023).

Garcia's request for invalidation of LD 15 and an injunction to redraw the map is now moot because the earlier-decided *Soto Palmer* case already did just that: it invalidated LD 15 and ordered a new map be drawn. Below, Garcia asked the three-judge district court to enjoin the State defendants from "enforcing or giving any effect to the boundaries of [LD] 15[,]" and "[o]rder the creation of a new valid plan . . . that does not violate the Equal Protection Clause." *Garcia*, ECF No. 18, at 18 (Amended Complaint). But the *Soto Palmer* district court earlier determined that LD 15 violated Section 2's prohibition against vote dilution and ordered that the district be redrawn. *See* App. A85-A86. This means the boundaries of the current LD 15 will not be given effect. Garcia's requested relief has already been granted, and he complains only about *why* he received that relief. Such complaints do not make a moot case justiciable.

It is true that Garcia also asked the district court to declare LD 15 "an illegal racial gerrymander[.]" *Garcia*, ECF No. 18, at 18. But given the absence of a live controversy, such relief would be an advisory opinion about a nonexistent legislative

map, which Article III forbids. *See Carney v. Adams*, 592 U.S. 53, 58 (2020) (a case must "embody a genuine, live dispute between adverse parties, thereby preventing the federal courts from issuing advisory opinions"). The court below thus could not provide any further relief to Garcia.

Based on intervening circumstances, this Court reached a similar mootness conclusion in *New York State Rifle & Pistol Association, Inc. v. City of New York*, 140 S. Ct. 1525 (2020) (per curiam). There, petitioners challenged a New York City rule regarding the transport of firearms. *Id.* at 1526. After this Court granted certiorari, the City amended its rule to allow petitioners to transport firearms to second homes and to shooting ranges outside of the city—mooting petitioners' claims for declaratory and injunctive relief. *Id.* This Court vacated the judgment below because the city's amendment granted "the precise relief that petitioners requested in the prayer for relief in their complaint." *Id.* So too here. Based on the *Soto Palmer* order enjoining use of the current LD 15 boundaries, Garcia received the relief he requested in the prayer for relief in his complaint.

Garcia argues that his case is not moot because if the decision in *Soto Palmer* is reversed on appeal, "the originally enacted LD-15 would once again take effect[.]" Jurisdictional Statement at 21. But that argument misunderstands this Court's mootness doctrine. A plaintiff must demonstrate, throughout the pendency of his case, that he is suffering an actual injury that will be redressed by a favorable decision *in his case*. *See, e.g.*, *Wittman v. Personhuballah*, 578 U.S. 539, 543 (2016) (plaintiff must show all three elements of standing "throughout the life of the

lawsuit") (citing *Arizonans for Official English*, 520 U.S. at 67). "If an intervening circumstance deprives the plaintiff of a 'personal stake in the outcome of the lawsuit,' *at any point during litigation*, the action can no longer proceed and must be dismissed as moot." *Genesis Healthcare Corp.*, 569 U.S. at 72 (emphasis added) (quoting *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477-78 (1990)). The possibility that the outcome of a different case will injure a plaintiff in the future is far too speculative to demonstrate existing harm: "'threatened injury must be *certainly impending* to constitute injury in fact'"—"'allegations of possible future injury' are not sufficient." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (emphasis in original) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)). Thus, it is untenable to base standing on the possibility that a different case might be reversed. *Cf. Juvenile Male*, 564 U.S. at 937 ("[O]ne can never be certain that findings made in a decision concluding one lawsuit will not some day . . . control the outcome of another suit. But if that were enough to avoid mootness, no case would ever be moot." (alterations in original) (quoting *Commodity Futures Trading Comm'n v. Bd. of Trade of Chicago*, 701 F.2d 653, 656 (7th Cir. 1983) (Posner, J.))).

Despite these foundational principles of standing and mootness, Garcia claims support for his radical position in several decisions of this Court and lower courts, but none actually help him.

To support his novel theory, Garcia first cites *Moore v. Harper*, but that case differed dramatically from this one. There, the petitioners were asking for reinstatement of North Carolina's legislatively enacted 2021 districting plan, which had been

invalidated by North Carolina state courts on state law grounds. *Moore*, 600 U.S. at 12. The petitioners argued that the federal Elections Clause prohibited the North Carolina courts from reviewing and altering the plan enacted by the legislature. *Id.* After this Court granted review on that issue, the North Carolina courts reversed course and held that state courts would not review claims of partisan gerrymandering under the state constitution. But the North Carolina courts did not reinstate the 2021 legislatively enacted map. *Id.* at 13. This Court therefore concluded that the North Carolina courts' change of heart did not moot the case, because the petitioners could still obtain the relief they sought—reinstatement of the 2021 maps—by prevailing in the Supreme Court. Indeed, the petitioners' only "path to complete relief" (the use of the 2021 maps) "runs through this Court," and the petitioners therefore retained a "personal stake" in the case. *Id.* at 15.

Moore's posture is profoundly different from the case here. In *Moore*, the only way the petitioners could obtain the relief they wanted was if this Court heard the case and ruled in their favor. *Id.* at 15. Here, by contrast, Garcia has already obtained the relief he originally requested: the district he challenged will not be used in future elections. His claim is that he may lose that relief and need it again if the decision in another case (*Soto Palmer*) is reversed. But that is not enough for Garcia to retain a "'personal stake' in th[is] litigation." *Id.* at 14 (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)). *Moore* is inapplicable.

Garcia also cites several circuit cases for the proposition that a case is not moot until a claim in another forum is conclusive, but none of those cases actually include that holding. *See* Jurisdictional Statement at 23-24.

For example, *Moore v. Louisiana Board of Elementary & Secondary Education*, 743 F.3d 959 (5th Cir. 2014), involved state court and federal court challenges to the same Louisiana law. Days after a federal district court issued a preliminary injunction against the new law on federal grounds, a Louisiana trial court invalidated the same law on state law grounds, a decision that was soon affirmed by the Louisiana Supreme Court. *Moore*, 743 F.3d at 962. The Eleventh Circuit then unsurprisingly concluded that the federal case was moot, because the law the plaintiffs sought to enjoin had already been enjoined on state law grounds in the state case. *Id.* at 963. The court never said or implied anything about whether the plaintiffs' claim became moot after the state trial court decision or only after the decision was affirmed on appeal.

Similarly, in *Enrico's, Inc. v. Rice*, 730 F.2d 1250 (9th Cir. 1984), the Ninth Circuit determined that a state court of appeals decision, which California's supreme court had declined to review, had rendered moot the equitable relief claims in the federal case. *Id.* at 1253-54. Although one party argued that a second, then-pending state court of appeals case might deliver a contrary decision adverse to that party, the Ninth Circuit thought it

"improbable" such a result would occur and concluded the case was moot. *Rice*, 730 F.2d at 1254. The *Rice* court explained it could not grant effective relief and thus lacked jurisdiction. *Id.*

In short, none of the cases cited by Garcia held that a separate decision invalidating a challenged law must become final in order to moot another challenge to the same law.

Garcia also inaptly relies on *Covington* to argue that his request for injunctive relief remains live. Jurisdictional Statement at 28 (citing *Covington*, 138 S. Ct. at 2553). He speculates that the remedy in *Soto Palmer* may result in "continuations of the old, gerrymandered districts[.]" Jurisdictional Statement at 28 (quoting *Covington*, 138 S. Ct. at 2553). But in *Covington*, unlike here, voters alleged North Carolina had gerrymandered their districts, the state's general assembly redrew maps, and voters again objected to those remedial maps alleging that the remedial maps perpetuated the unconstitutional aspects of the original plan. *Covington*, 138 S. Ct. at 2552-53. Here, Garcia has not alleged (nor can he, given that no new map has yet been drawn in *Soto Palmer*) that the redrawn LD 15 will be a mere continuation of the purportedly gerrymandered original boundary. *Id.* at 2548. Garcia's speculation that the remedial map will still be an unconstitutional racial gerrymander is particularly unfounded because the district court—not the Legislature—will be drawing the reconfigured LD 15 in *Soto Palmer*. *See* App. A89-A91.

Garcia's next speculative argument against mootness—that the remedial map will result in "a more racial gerrymandered district[,]" Jurisdictional Statement at 29—is at odds with the remedies that Section 2 of the VRA permits and this Court's precedent. As the Court has recognized, the VRA "demands consideration of race" and "may justify the consideration of race in a way that would not otherwise be allowed." *Abbott*, 138 S. Ct. at 2315; *see also Allen*, 599 U.S. at 41 ("[F]or the last four decades, this Court and the lower federal courts have repeatedly applied the effects test of § 2 as interpreted in *Gingles* and, under certain circumstances, have authorized race-based redistricting as a remedy for state districting maps that violate § 2."). Section 2 does not violate the Equal Protection Clause, and consideration of race in remedying a Section 2 violation "does not lead inevitably" to equal protection concerns. *Shaw v. Reno*, 509 U.S. 630, 646 (1993). This Court reaffirmed just last Term that drawing a district to comply with Section 2 does not violate the Constitution. *See Allen*, 599 U.S. at 41-42. There is simply no basis for Garcia's speculative assumption that whatever remedial map the district court orders will inevitably violate the Constitution.

Garcia also raises a workability concern about the status of his case if the *Soto Palmer* decision is reversed. Jurisdictional Statement at 26-27. This concern is no different than in a typical case dismissed on mootness grounds, in which it is always possible that the reasons for mootness may change in the future. Regarding the practicalities of pursuing both cases on appeal, there is no reason his appeal of this jurisdictional issue and the Intervenors' appeal of the

Soto Palmer order cannot be consolidated onto the same track before the Ninth Circuit, just as this case and *Soto Palmer* were consolidated for purposes of trial. And if the Ninth Circuit reverses in *Soto Palmer*, it can also reverse the district court's decision here.

Because a new legislative district map will be entered based on the Section 2 violation found in *Soto Palmer*, the three-judge court in this case was correct to dismiss as moot and refrain from "unnecessarily decid[ing] a constitutional issue where there are alternate grounds available . . . ." App. A4.

C. The Rule Appellant Suggests and His Rationales for It Make No Sense

Garcia not only asks this Court to overturn precedent to review his moot claim, he proposes two new rules that contradict this Court's jurisprudence, lead to absurd consequences, and are rooted in baseless policy concerns. While the sections above describe some of these flaws, it is worth taking a step back to emphasize how deeply problematic Garcia's arguments are when taken as a whole. The Court should reject his extreme proposals.

Garcia's first new proposed rule, detailed above, *supra* at 20-21, is that the Court overrule *Gonzalez* and hold that this Court must review *any* dismissal by a three-judge district court, no matter how divorced from the merits. Jurisdictional Statement at 9-10. As already explained, that would force this Court to review even the most mundane of dismissals without any basis in statutory text, precedent, or logic.

Second, Garcia claims that in any future case where a redistricting plan is challenged under the VRA and also under the Equal Protection Clause, the racial gerrymandering claim "must be given priority" and decided first. *See* Jurisdictional Statement at 4-5. Garcia cites no case, treatise, constitutional principle, or even law review article to support this radical approach. And as noted above, this Court and lower courts routinely exercise restraint by declining to decide constitutional claims when cases can instead be resolved under the VRA. *Supra* at 19-20. This is a straightforward application of the broader principle that courts should decide constitutional questions only when necessary. *See, e.g.*, *Nw. Austin Mun. Util. Dist. 1*, 557 U.S. at 205.

Adopting Garcia's contrary approach would mean that courts would routinely have to decide racial gerrymandering claims even where doing so is unnecessary. This flatly contradicts this Court's repeated admonition that racial gerrymandering claims are particularly fraught because they present such profound evidentiary difficulties and intrusions into the legislative process. *See, e.g.*, *Miller v. Johnson*, 515 U.S. 900, 916 (1995) (explaining that the "evidentiary difficulty" of assessing whether a decision was motivated by race, "together with the sensitive nature of redistricting and the presumption of good faith that must be accorded legislative enactments, requires courts to exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race"). Under Garcia's rule, courts considering redistricting challenges would routinely have to decide whether the state's legislature engaged in intentional racial

gerrymandering, even if no such review were necessary because the challenged map was invalid on other grounds.

Garcia's proposal is especially flawed because a defendant may defeat a racial gerrymandering claim by showing that racial considerations were necessary to avoid Section 2 liability. *See, e.g.*, *Cooper v. Harris*, 581 U.S. 285, 292 (2017). Thus, under Garcia's proposed rule, even if a court addressed the racial gerrymandering claim first and found a problem, it would still have to reach the Section 2 claim anyway. So what possible sense does it make to decide the constitutional question first?

Adopting Garcia's extreme rules would be a perilous step even if there were some good reason to do so, but Garcia cites none. The two policy rationales he offers are entirely unsupported.

First, Garcia claims that this Court must review every dismissal, even jurisdictional ones, to avoid "docket games" by lower courts. Jurisdictional Statement at 10, 11. But as explained above, *supra* at 20, he offers no evidence that anything of the sort occurred here or has occurred in any other case. His proposal is a bad solution in search of a nonexistent problem.

Second, Garcia suggests that the Court must adopt these rules to avoid creating "a roadmap for future litigants." Jurisdictional Statement at 11; Jurisdictional Statement at 4 (arguing that unless the Court orders constitutional claims to be "decided first," it will lead "inevitably to similar gamesmanship in future cases"). But this concern is nonsensical. How would a future litigant behave differently if the Court

simply follows its existing precedent? A plaintiff considering bringing a Voting Rights Act claim would have no way of knowing in advance: (1) whether an unrelated plaintiff would file a constitutional challenge to the same district months later; or (2) whether the court would ultimately rule in his favor on the VRA claim, thus mooting the constitutional claim. Nothing about this case creates any sort of improper "roadmap" for future litigants. And there is no reason for this Court to upend its precedent and constitutional avoidance doctrine to address an imaginary issue.

CONCLUSION

The Court should dismiss this appeal for lack of appellate jurisdiction. In the alternative, the Court should summarily affirm the order dismissing the case as moot.

RESPECTFULLY SUBMITTED.

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December 22, 2023

No. 23-467

In the Supreme Court of the United States

BENANCIO GARCIA III,

APPELLANT,

v.

STEVEN HOBBS, ET AL.,

APPELLEES.

CERTIFICATE OF WORD COUNT

Pursuant to Rule 33.1(h) of the Rules of this Court, I certify that the accompanying State Of Washington's Motion To Dismiss Or Affirm, which was prepared using Century Schoolbook 12-point typeface, contains 8,564 words, excluding the parts of the document that are exempted by Rule 33.1(d). This certificate was prepared in reliance on the word-count function of the word-processing system (Microsoft Word) used to prepare the document.

I am a member of the Bar of the Supreme Court of the United States.

DATED this 22nd day of December 2023.

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No. 23-467

In the Supreme Court of the United States

BENANCIO GARCIA III,

APPELLANT,

V.

STEVEN HOBBS, ET AL.,

APPELLEES.

CERTIFICATE OF SERVICE

I hereby certify that:

1. On December 22, 2023, the State Of Washington's Motion To Dismiss Or Affirm was served as follows:

2. Three copies of the motion were deposited in the United States Post Office, Olympia, Washington 98504, with first-class postage prepaid, addressed to Counsel listed on the attached service list.

3. All parties required to be served have been served.

4. I have caused forty copies of the motion to be delivered to a commercial carrier for delivery to the Court within two days.

5. I am a member of the Bar of the Supreme Court of the United States.

DATED this 22nd day of December 2023.

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