

NO. 23-35595

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SUSAN SOTO PALMER, et al.,

Appellees,

v.

STEVEN HOBBS, et al.,

Respondents,

JOSE A. TREVINO, et al.,

Intervenor-Appellants.

STATE OF
WASHINGTON'S
OPPOSITION TO
INTERVENOR-
DEFENDANT-
APPELLANTS' MOTION
TO HOLD BRIEFING IN
ABEYANCE

I. INTRODUCTION

The State of Washington qualifiedly opposes Intervenor–Defendants–Appellants’ (Intervenors’) motion to stay briefing in this appeal—their *fifth* attempt to stay the case and/or appeal.¹ Although couched in terms of preserving judicial economy, Intervenors’ motion appears to be a speculative ploy to overcome their lack of standing to bring this appeal.

¹ See ECF Nos. 97, 123, 232, *Soto Palmer v. Hobbs*, No. 3:22-cv-05035-RSL (W.D. Wash.); DktEntry 34-1, *Soto Palmer v. Hobbs*, No. 23-35595 (9th Cir.).

II. BACKGROUND AND PROCEDURAL HISTORY

Briefly stated, this case arises from two lawsuits challenging legislative redistricting in Washington. Shortly after new maps were enacted, Plaintiffs—Appellees in this suit brought this action alleging that one state legislative district—LD 15—diluted Hispanic votes in violation of Section 2 of the Voting Rights Act. Complaint, *Soto Palmer v. Hobbs*, No. 22-cv-5035-RSL (W.D. Wash. Jan. 19, 2022), ECF No. 1.² Nearly two months later, Benancio Garcia III filed a second challenge to the map, claiming that LD 15 was a racial gerrymander in violation of the Fourteenth Amendment. Complaint, *Garcia v. Hobbs*, No. 22 -cv-5152-RSL-DGE-LJCV (W.D. Wash. Mar. 15, 2022), ECF No. 1.

Two weeks after *Garcia* was filed, three individuals—represented by the same counsel as Mr. Garcia—moved to intervene in *Soto Palmer* to defend LD 15 against *Soto Palmer* Plaintiffs’ Section 2 claims. *See* Motion to Intervene, *Soto Palmer*, ECF No. 57. The district court allowed Intervenors to permissively intervene and defend the map, despite determining they “ha[d] no right or

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

protectable interest in any particular redistricting plan or boundary lines.”³ Order Granting Motion to Intervene, *Soto Palmer*, ECF No. 69 at 4.

Ultimately, the two cases were heard together in a joint trial, after which the *Soto Palmer* Court (District Court Judge Robert Lasnik) ruled in favor of the VRA Plaintiffs, and the *Garcia* Court (a three-judge court consisting of District Court Judges Lasnik and David Estudillo and Ninth Circuit Judge Lawrence VanDyke) concluded that Mr. Garcia’s suit was moot in light of the *Soto Palmer* ruling (with Judge VanDyke dissenting). Memorandum of Decision, *Soto Palmer*, ECF No. 218; Opinion and Order Dismissing Plaintiff’s Claim as Moot, *Garcia*, ECF No. 81.

Pursuant to the *Soto Palmer* district court’s decision (and subsequent orders), the parties are currently engaged in the remedial process aimed at meeting the March 25, 2024, deadline to adopt new maps. Joint Pretrial Statement, *Soto Palmer*, ECF No. 191; Order, *Soto Palmer*, ECF No. 230.

Intervenors have appealed Judge Lasnik’s decision on the merits and also filed a Petition for Certiorari before Judgment in the U.S. Supreme Court. *See*

³ The District Court separately ordered that the State of Washington be joined as a defendant to ensure that, if Plaintiffs were able to prove their claims, the Court would have the power to provide all of the relief requested, particularly the development and adoption of a Voting Rights Act-compliant redistricting plan. Order of Joinder, *Soto Palmer*, ECF No. 68.

Soto Palmer v. Hobbs, 9th Cir. No. 23-35595; *Trevino v. Soto Palmer*, U.S. No. 23-484. Mr. Garcia (who, again, is represented by the same counsel as Intervenor(s)) filed his Jurisdictional Statement with the Supreme Court. *Garcia v. Hobbs*, U.S. No. 23-467. The Petition and Statement have been distributed for the Supreme Court's January 19, 2024, conference.

Meanwhile, Intervenor(s) moved to stay proceedings in the district court, which Judge Lasnik denied, Order Denying Emergency Motion to Stay Proceedings, *Soto Palmer*, ECF No. 242, and in this Court, which Judges Rawlinson and Hurwitz denied, DktEntry No. 45.

In briefing the Intervenor(s)' Petition and Motion to Stay before this Court, both the State and the Plaintiffs–Appellees pointed out that Intervenor(s) lack standing to bring this appeal because Judge Lasnik's order did not require them to do or refrain from doing anything, and did not otherwise inflict any personal injury on Intervenor(s). *See* DktEntry 36-1 at 13–14; DktEntry 35-1 at 3–7. In response, shortly before filing this Motion, Intervenor(s)' counsel filed a new motion to intervene in the district court, this time on behalf of State Senator Nikki Torres, who represents LD 15. Motion to Intervene of Senator Nikki Torres, *Soto Palmer*, ECF No. 253. Both the Plaintiffs and the State oppose Sen. Torres' untimely intervention. Plaintiffs' Opposition to Motion to Intervene

of Senator Nikki Torres, *Soto Palmer*, ECF No. 255; State of Washington’s Response to Senator Nikki Torres’ Motion to Intervene, *Soto Palmer*, ECF No. 256. That motion was fully briefed as of January 11, 2023, and a decision on it is likely imminent.

III. ARGUMENT

To start, Intervenors lack standing to bring this appeal. *See* DktEntry 36-1 at 13–14. Intervenors have now sought to fix their fatal lack of standing by belatedly moving to bring in yet another intervenor, State Senator Nikki Torres, purportedly to participate in the remedial phase. *See* Motion to Intervene of Senator Nikki Torres, *Soto Palmer*, ECF No. 253. This effort is doubly futile, both because Sen. Torres’ intervention motion is profoundly untimely, *see* State of Washington’s Response to Senator Nikki Torres’ Motion to Intervene, *Soto Palmer*, ECF No. 256, and because Sen. Torres would lack standing to appeal—just the same as the current Intervenors. *See, e.g., City of Philadelphia v. Klutznick*, 503 F. Supp. 663, 672 (E.D. Pa. 1980) (holding that elected officials suffer no cognizable injury when their district boundaries are adjusted by reapportionment). While the State anticipates the district court will deny Intervenors’ motion, the motion nonetheless remains pending.

Against this backdrop, Intervenors' bid to consolidate briefing on their merits and (presumptive) remedial appeals is not about "[b]edrock principles of judicial economy," DktEntry 48 at 6, but about blurring the boundaries between the two appeals in the hopes that Senator Torres's (doubtful, but still possible) presence in the remedial phase and subsequent appeal might cause this Court to overlook Intervenors' lack of standing on their merits appeal.⁴ Indeed, Senator Torres' proposed brief in intervention, although nominally limited to remedies, seeks to relitigate merits questions that were already decided by the district court. *See Soto Palmer*, ECF No. 256 at 5. As long as there remains the possibility that the merits and remedial appeals will include different Appellants, it is appropriate for the briefing to be kept separate. Intervenors can obviously "address any remedial issues" in the appeal of the remedy order. DktEntry 48 at 5. And to the extent this Court remains concerned about judicial economy, the State would not oppose the Court assigning both the merits appeal and remedial appeal to the same panel.

That said, should the District Court deny Senator Torres's motion to intervene, the parties in both appeals will be the same. At that point, the State

⁴ To be clear, even if Senator Torres is permitted to intervene, she still lacks standing to appeal.

would not oppose, and would defer to this Court, on whether the two appeals should be consolidated. *See* Fed. R. App. P. 3(b)(2).

IV. CONCLUSION

The State respectfully requests the Court deny Intervenor’s Motion to Hold Briefing in Abeyance, unless and until the district court denies Intervenor’s request to add Senator Torres as a Defendant.

RESPECTFULLY SUBMITTED this 16th day of January 2024.

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