

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

SUSAN SOTO PALMER, *et al.*,

Plaintiffs – Appellees,

v.

STEVEN HOBBS, in his official
capacity as Secretary of State of
Washington, and the STATE OF
WASHINGTON,

Defendants – Appellees,

and

JOSE TREVINO,
ISMAEL G. CAMPOS, and State
Representative ALEX YBARRA,

Intervenor-Defendants –
Appellants.

No. 24-1602

D.C. No. 3:22-cv-5035-RSL
U.S. District Court for Western
Washington, Tacoma

**APPELLANTS'
UNOPPOSED MOTION
FOR LEAVE TO FILE
OVERLENGTH MOTION
FOR EMERGENCY STAY**

UNOPPOSED MOTION FOR LEAVE TO FILE OVERLENGTH BRIEF

Intervenor-Defendant-Appellants Jose Trevino, Alex Ybarra, and Ismael Campos (“Appellants”) respectfully request leave to file the attached 29-page motion for emergency stay pending appeal in this matter. Appellants submit that this modest relief is appropriate considering (1) the importance of the issues presented—millions of Washingtonians will vote in the 2024 elections whose legislative districts are modified by the Remedial Map that Appellants seek to stay pending appeal; (2) the number of issues presented under the federal Voting Rights Act (“VRA”) and the Equal Protection Clause and the significant number the legal errors made by the district court in applying them; (3) the novelty of many of the issues on appeal, and; and (4) the absence of the State as a co-Appellant.

Plaintiff-Appellees consent to this request provided they receive an equivalent expansion of for their response. Appellants consent to such an expansion and therefore request an expansion of the page limit for all responses to 29 pages for all parties. The State and the Secretary of State have both indicated that they do not oppose this motion.

A modest expansion of the page limit for motions is warranted here for four reasons. *First*, resolution of Appellants’ motion is vitally important to millions of voters. The district court’s Remedial Map makes sweeping changes to the legislative districts for Washington. Although the VRA Section 2 violation found by the district court was limited to a single district (Legislative District 15), the district court’s Remedial Map affects districts across the state. Indeed, it alters the boundaries of no fewer than 13

districts (out of 49) and moves roughly half a million voters into a different legislative district. ADD-148-150. Even if not moved themselves to a different district, millions of Washingtonians live in districts whose boundaries would be altered by the Remedial Map.

Given that a huge number of voters will vote in different districts if the Remedial Map is not stayed, a modest expansion of the page limits is warranted to present the issues adequately for this Court's review.

Second, this appeal involves a large number of issues. In fact, it is essentially two appeals combined into one: (1) an appeal from the district court's merits decision holding that LD-15 of the Enacted Map violated §2 of the VRA, presenting all of the VRA merits issues (docketed as No. 23-35595) and (2) this appeal of the district court's remedial order/map, implicating the remedial issues and well as the merits ones by extension (since *no* remedy was appropriate here if there was no violation of the VRA). Recognizing that these combined issues should be heard together, this Court on January 25, 2024 granted Appellants' motion for an abeyance for the purpose of consolidating the two appeals and hearing all related issues together. *See* No. 23-35595, ECF No. 59.¹

The large number of issues warrants a modest expansion of the page limits. Although Appellants have triaged their appellate arguments for their stay motion, evaluating likelihood of success on appeal is a holistic assessment. It therefore is helpful

¹ Appellants will file a motion to consolidate the two appeals this week.

to consider the numerous asserted errors together to evaluate whether Washington voters are being saddled with an unlawful map that is likely the product of legal errors.

Third, the novelty of the issues presented merits some additional discussion. This Court, for example, does not appear to have considered previously a vote-dilution challenge to a district where a minority group was already a *majority* of the citizen voting-age population in the district. But the district court held that LD-15, a district with a majority Hispanic citizen voting age population (“HCVAP”)—52.6% in 2021 numbers—unlawfully diluted Hispanic voting strength. ADD-1-32.

Similarly, this Court has never previously considered a remedial map where the putative remedy for vote dilution was yet more vote dilution. But this case presents that novel issue too, with the district court’s Remedial Map purporting to remedy dilution of Hispanic voting power by diluting HCVAP from 52.6% to 50.2%. ADD-125. Finally, (1) the bizarre shape of the new remedial district—aptly described as a “octopus slithering along the ocean floor,” ADD-99 (copied next), and (2) the gratuitous sweep of the Remedial Map—changing a total of *13 districts* to remedy a violation found in only a *single district*—are (thankfully) both peerless or nearly so in this Circuit.

Figure 1: Remedial District Adopted by District Court (Numbered 14)

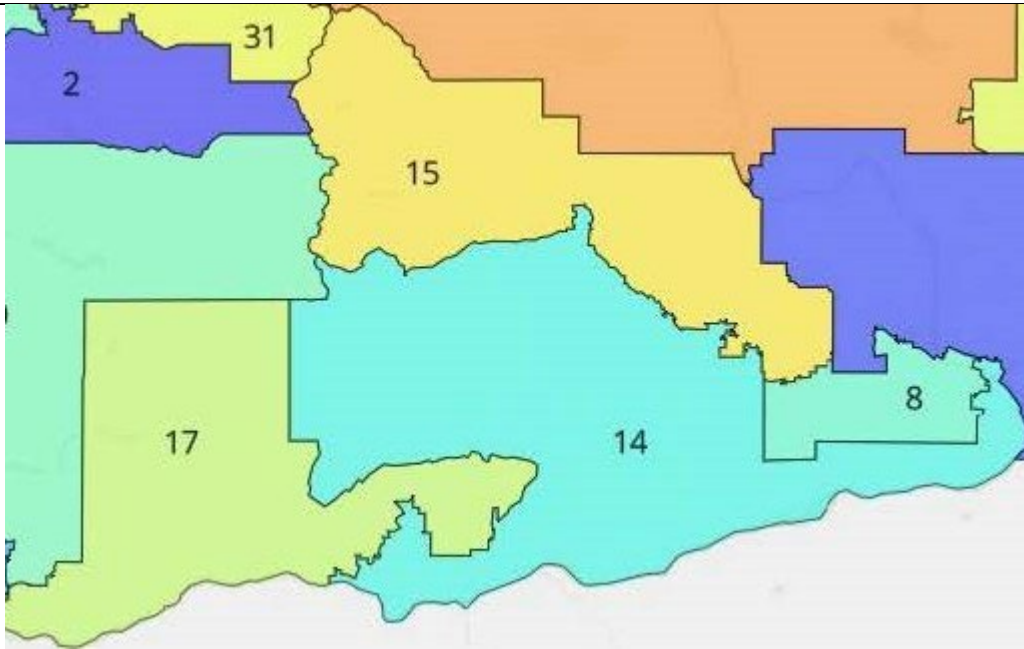
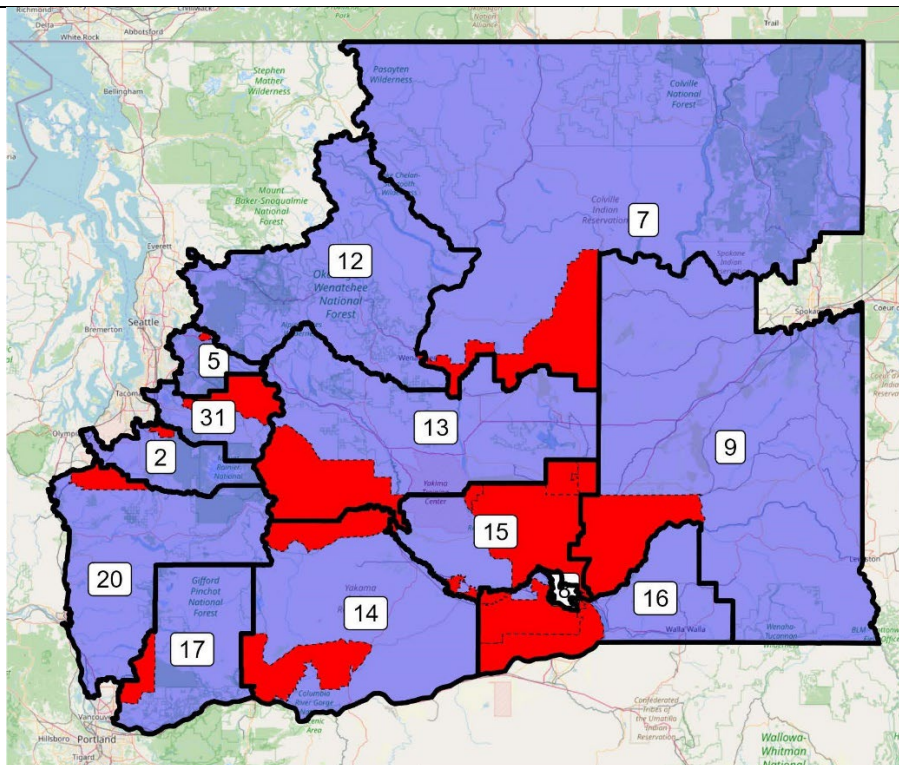


Figure 2: Districts Altered by Remedial Map (red indicates boundary changes)



The increase in page limit is also appropriate to facilitate the inclusion of the top image in the motion.

Fourth, an expansion of the page limits is warranted given the absence of the State here. In a typical case where State legislative or congressional maps were invalidated, Intervenors would be joined by the State itself and could coordinate briefs/divide-and-conquer to cover the issues adequately. But although States suffer “serious[] and irreparabl[e] harm” whenever election laws are enjoined, *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018), the State has elected not to appeal or seek a stay pending appeal. Appellants thus cannot coordinate efforts with it and instead must present them fully itself.

CONCLUSION

For these reasons, Appellants’ request for leave to file a 29-page motion for emergency stay should be granted. In addition, Appellants request that the limit for responses for all parties also be expanded to 29 pages.

Respectfully submitted,

s/ Jason B. Torchinsky

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CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system, which will notify all registered counsel.

/s/ Jason B. Torchinsky
Jason B. Torchinsky