

The Honorable Robert S. Lasnik

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**UNITED STATES DISTRICT COURT
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, et al.,
Defendants,

and

JOSE TREVINO et al.,
Intervenor-Defendants.

Case No.: 3:22-cv-5035-RSL

INTERVENOR-DEFENDANTS’ AND
CROSS-PLAINTIFFS’ RENEWED
MOTION TO STAY PROCEEDINGS

NOTE ON MOTION CALENDAR:

Proposed Expedited Date: January 13, 2023

Normal Course Date: January 20, 2023

I. RELIEF REQUESTED

Pursuant to the Court’s inherent power “to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for the litigants,” *Landis v N. Am. Co.*, 299 U.S. 248, 254 (1936), Fed. R. Civ. P. 26, 33 and 34, and in accordance with this Court’s invitation when denying Intervenor-Defendants’ original Motion to Stay to “refile[] after discovery has been completed” (Dkt. # 101 at 2), Intervenor-Defendants and Cross-Plaintiffs Jose A. Trevino, Ismael G. Campos, and Alex Ybarra respectfully renew the request to stay all proceedings pending resolution of *Merrill v. Milligan*, No. 21-1086, 2022 U.S. LEXIS 1626 (U.S.

1 argued Oct. 4, 2022) by the Supreme Court of the United States and request expedited review of
 2 this Renewed Motion to Stay Proceedings (“Renewed Motion”).¹

3 II. PROCEDURAL HISTORY

4 On October 5, 2022, Intervenor-Defendants filed a Motion to Stay Proceedings (“Original
 5 Motion”) pending the U.S. Supreme Court’s resolution of the Alabama redistricting case *Merrill*
 6 *v. Milligan*, No. 21-1086. (*See generally* Dkt. # 97.) Intervenor-Defendants argued there, as they
 7 do here, that *Merrill* implicates important questions concerning the proper application of Section
 8 2 of the Voting Rights Act of 1965 that will be dispositive in this case, just as they were dispositive
 9 in two redistricting cases arising out of Louisiana that were stayed pending a decision in *Merrill*.
 10 *See Ardoin v. Robinson*, No. 21-1596, 2022 WL 2312680, at *1 (U.S. *stay granted* June 28, 2022)²
 11 and *Nairne v. Ardoin*, No. 22-178-SDD-SDJ, 2022 U.S. Dist. LEXIS 155706, at *7 (M.D. La. *stay*
 12 *granted* Aug. 30, 2022). Similar to the two consolidated cases before the U.S. Supreme Court and
 13 the two stayed Louisiana matters, Plaintiffs in this action seek relief under Section 2 of the Voting
 14 Rights Act, 52 U.S.C. § 10301, and 42 U.S.C. § 1983. (*See, e.g.*, Dkt. # 70.) Specifically, Plaintiffs
 15 allege that the Washington State Redistricting Commission’s enacted state legislative map was
 16 adopted with the intent to discriminate on the basis of race, national origin, and/or language
 17 minority status, and that the plan has the effect of denying Latino voters in Central Washington an
 18 equal opportunity to participate in the political process and elect their candidates of choice. (*See*
 19 *id.*) Because Plaintiffs here have brought both discriminatory intent and effects-based claims under
 20 Section 2, the legal questions presented here are substantially similar to those in *Merrill*.

21 Nevertheless, on October 26, 2022, the Court denied Intervenor-Defendants’ Original
 22 Motion. (*See* Dkt. # 101.) Although the Court did not specifically identify the reason for its denial,
 23 it indicated there was “a fair possibility that the stay for which [Intervenor-Defendants] pray[ed]
 24 w[ould] work damage to someone else”—namely, the Plaintiffs who at that time were seeking to

25 _____
 26 ¹ Through their respective counsel, Plaintiffs and Defendant/Cross-Defendant State of Washington have indicated they
 oppose this motion; Defendant/Cross-Defendant Secretary of State Steve Hobbs takes no position on this motion.

27 ² In this case, the Supreme Court actually issued a rare grant of a “petition for a writ of certiorari before judgment,”
 bypassing the Fifth Circuit, staying the case, and holding it in abeyance pending the outcome of *Merrill*.

1 conduct discovery. (*Id.* at 2.) However, the Court denied the Motion without prejudice, and
 2 explicitly left the door open for Intervenor-Defendants to “refile[] after discovery has been
 3 completed.” (*Id.*)

4 As of January 3, 2023, discovery in this matter is now complete³ and so Intervenor-
 5 Defendants and Cross-Plaintiffs bring this Renewed Motion to Stay Proceedings. Because the
 6 Supreme Court has clearly indicated that it intends to reconsider binding precedent in a pending
 7 case that has already been argued and that will be decided within the next six months, and because
 8 the interests of judicial economy favor a stay while the controlling law awaits settlement and there
 9 will be no harm to Plaintiffs now that discovery is complete, Intervenor-Defendants and Cross-
 10 Plaintiffs move this Court to stay these proceedings pending the resolution of *Merrill v. Milligan*.

11 III. ARGUMENT

12 The power and discretion to stay a case “is incidental to the power inherent in every court
 13 to control the disposition of the cases on its docket with economy of time and effort for itself, for
 14 counsel, and for the litigants.” *Landis v. N. Am. Co.*, 299 U.S. at 254. “How this can best be done
 15 calls for the exercise of judgment, which must weigh competing interests and maintain an even
 16 balance.” *Id.* at 254-55. Courts have the inherent power to stay proceedings while awaiting the
 17 outcome of another matter that may have a substantial or dispositive effect. *Am. Life Ins. Co. v.*
 18 *Stewart*, 300 U.S. 203, 215 (1937). A court is within its discretion to grant a stay when an
 19 independent case pending before another court presents substantially similar issues that “bear
 20 upon” the instant case. *See Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863-64
 21 (9th Cir. 1997); *see also Robledo v. Randstad US, L.P.*, 2017 U.S. Dist. LEXIS 181353, at *10
 22 (N.D. Cal. Nov. 1, 2017). Furthermore, “it is within the district court’s discretion to grant or deny
 23 [lengthy or indefinite] stays, after weighing the proper factors.” *Blue Cross & Blue Shield of Ala.*
 24 *v. Unity Outpatient Surgery Ctr., Inc.*, 490 F.3d 718, 723-24 (9th Cir. 2007).

25 _____
 26 ³ On December 30, 2022, the Court granted the Parties’ Stipulated Motion to Allow Depositions Out of Time and
 27 Extension of Written Discovery Responses. (*See* Dkt. # 122.) Notwithstanding this Renewed Motion, Intervenor-
 Defendants and Cross-Plaintiffs request that the very limited extensions discussed in the Order be allowed to take
 place, the last of which is a third-party deposition set to occur on January 23, 2023.

1 “District courts often stay proceedings where resolution of an appeal in another matter is
2 likely to provide guidance to the court in deciding issues before it.” *Washington v. Trump*, No.
3 C17-0141JLR, 2017 U.S. Dist. LEXIS 75426, at *8 (W.D. Wash. May 17, 2017). And “[w]here a
4 stay is considered pending the resolution of another action, the court need not find that the two
5 cases involve *identical* issues; a finding that the issues are *substantially similar* is sufficient to
6 support a stay.” *Id.* (emphasis added); *see also Leyva*, 593 F.2d at 863-64 (indicating that a stay
7 pending resolution of independent proceedings that bear on the case “does not require that the
8 issues in such proceedings are necessarily controlling of the action before the court”).

9 When considering whether to stay a matter pending resolution of a separate related action,
10 the Ninth Circuit has instructed that district courts consider the following factors and competing
11 interests: (1) “the possible damage which may result from the granting of a stay;” (2) “the hardship
12 or inequity which a party may suffer in being required to go forward;” and (3) “the orderly course
13 of justice measured in terms of the simplifying or complicating of issues, proof, and questions of
14 law which could be expected to result from a stay.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110
15 (9th Cir. 2005) (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265 (9th Cir. 1962)); *see also* Dkt. # 101 at
16 2 (applying *Lockyer* factors).

17 Here, because each factor weighs decisively in favor of a stay in the wake of the completion
18 of discovery in this case, the Court should grant Intervenor-Defendants’ Renewed Motion to Stay
19 Proceedings.

20 **A. No Damage to Plaintiffs Will Result from Granting a Stay.**

21 Plaintiffs will not suffer any harm or prejudice from the grant of a stay pending resolution
22 of *Merrill*. The next scheduled state legislative election in Washington is in 2024, but a decision
23 from the U.S. Supreme Court in *Merrill* is expected no later than June 2023. Therefore, no
24 additional elections will be conducted under the enacted state legislative map before *Merrill* is
25 decided, or before Washington’s next top-two primary election scheduled for August 6, 2024. This
26 means that this Court and the litigants will have more than a year post-*Merrill* to litigate this case
27 in light of that decision. That is more than enough time to resolve this dispute, and Plaintiffs’

1 voting rights cannot be harmed in the interim when no elections will be held in which they would
2 have the opportunity to vote for state legislative candidates under the enacted map.

3 Plaintiffs also raised concerns regarding the potential spoliation of evidence in the event of
4 a stay, noting that some witnesses were already struggling to recall relevant details in depositions
5 conducted in the autumn of 2021. (*See* Dkt. # 98 at 4-5.) This concern is no longer relevant to the
6 stay inquiry because discovery is complete; all fact witnesses have been deposed.⁴ There is no
7 danger that evidence will be allowed to “go stale” when all evidence has already been collected.
8 (*Id.* at 4.) Once *Merrill* has been decided, the Parties can immediately commence dispositive
9 briefing in the interest of expeditiously resolving this matter before Central Washington voters cast
10 ballots for legislative races again in August 2024. None of the evidence that Plaintiffs have
11 collected through discovery will deteriorate between now and then.

12 Moreover, in the event that no stay is granted, there is a significant danger for Plaintiffs
13 and the other Parties that they will conduct dispositive briefing only for the relevant legal standard
14 to materially change after they have expended substantial time and resources arguing their position
15 under caselaw that has become incomplete or inapplicable. Wasting the resources of the Parties
16 and the Court litigating in reliance upon a standard that could change in a matter of months,⁵ during
17 a period when no election will be held in the challenged district for *more than eighteen months*,
18 benefits no one and harms everyone.

19 **B. All Parties Will Be Harmed If This Case is Allowed to Proceed Before *Merrill***
20 **Is Decided.**

21 As explained above, there is a substantial risk that this case will have to be litigated twice
22 if the requested stay is not granted now. While all legal standards are potentially subject to

23 ⁴ In the event that the Supreme Court announces a new standard governing Section 2 claims in *Merrill*, Intervenor-
24 Defendants acknowledge that some limited amount of additional discovery could be needed. However, such discovery,
if necessary, would only be focused on any changes to the governing legal standard since the factual record will soon
be complete. (*See* Dkt. # 122 (granting limited extensions of discovery deadlines).)

25 ⁵ As Chief Justice Roberts indicated in his dissenting opinion opposing the stay granted in *Merrill*, the Supreme Court
26 in his view does need to resolve some of the challenges and uncertainties in current Section 2 jurisprudence. *See* 142
S. Ct. at 883 (“In order to resolve the wide range of uncertainties arising under *Gingles*, I would note probable
jurisdiction in *Merrill* and grant certiorari before judgment in *Caster*, setting the cases for argument next Term.”).
27 Relatedly, the Chief Justice did not note a dissent when the stay and grant of certiorari before judgment was granted
in *Robinson*.

1 alteration at some indeterminate future date, here the Supreme Court has clearly signaled that it is
2 reconsidering its analysis of effects claims under Section 2 of the Voting Rights Act by granting
3 Appellants' petition for certiorari in *Merrill*. Furthermore, because oral argument was already
4 conducted in *Merrill* in October 2022, this Court can be reasonably certain of when the applicable
5 standard will change, if indeed it does—no later than the end of the Supreme Court's current term
6 in June 2023. Hence, the Court already knows *what* the Supreme Court is considering, that the
7 Supreme Court this term has granted cert before judgment and stayed a similar case, as well as the
8 latest possible date *when* it will render a decision; the only question remaining for this Court is
9 *how* it will respond to those signals in a manner that protects its interests and those of the Parties
10 before it.

11 Section 2 claims are always fact- and resource-intensive inquiries. *See, e.g., NAACP v.*
12 *Fordice*, 252 F.3d 361, 367 (5th Cir. 2001) (explaining that Section 2 cases require “an intensely
13 local appraisal of the design and impact of the contested electoral mechanisms, a searching
14 practical evaluation of the past and present reality and a functional view of political life”). By
15 denying Intervenor-Defendants' initial Motion for Stay, this Court ensured that Plaintiffs could
16 complete discovery and prevent the spoliation of evidence. (*See* Dkt. # 101.) If the Court now
17 denies this Renewed Motion, however, it runs the risk of placing the Parties in a position where
18 they would be forced to relitigate the dispute following the disposition of *Merrill*, without
19 achieving any simultaneous gains in the form of reducing potential harm to the Parties. Issuing a
20 final order in this case that is immediately obviated by a Supreme Court decision to the contrary
21 will achieve nothing more than duplication of effort.

22 If a revised Section 2 standard is announced by the Court in *Merrill*, the Parties can utilize
23 that new standard in their dispositive briefing and avoid unnecessarily briefing the same issues
24 twice. Moreover, if in fact the applicable test is revised in a significant, outcome-determinative
25 way, granting a stay avoids the uncomfortable scenario in which this case is fully litigated under
26 one standard, and then relitigated under another with a decision in favor of a different party.
27

1 **C. The Interests of Judicial Economy Favor a Stay So as To Avoid Relitigating**
2 **Issues.**

3 Finally, the interest of the Court itself favors the grant of a stay pending resolution of
4 *Merrill*. As this Court has recognized, the “orderly course of justice” factor from *Lockyer* is
5 synonymous with the interests of “judicial economy.” *Naini v. King Cnty. Pub. Hosp. Dist. No. 2*,
6 No. C19-0886-JCC, 2020 U.S. Dist. LEXIS 15015, at *7 (W.D. Wash. Jan. 29, 2020). This factor
7 is satisfied in cases like this one that “will be easier to decide at some later date.” *Sarkar v.*
8 *Garland*, 39 F.4th 611, 619 (9th Cir. 2022). “[E]ven if a stay is not necessary to avoid hardship, a
9 stay can be appropriate if it serves the interests of judicial economy.” *Naini*, 2020 U.S. Dist. LEXIS
10 15015, at *7.

11 Here, the interests of judicial economy would be served by the grant of a stay. The Court
12 has already successfully addressed any concerns about the potential spoliation of evidence by
13 ordering that discovery proceed; now that discovery is complete and all deponents’ recollections
14 have been preserved for the record, there is no longer any danger that such evidence will go stale.
15 There remains, however, a substantial danger that an obsolete legal standard will be applied to
16 those facts only to be altered shortly thereafter, thereby requiring duplication of effort from this
17 Court and from the Parties.

18 Now that discovery is complete, the next step in this litigation is dispositive motions, which
19 are currently due on January 31, 2023. Under Fed. R. Civ. P. 56, this Court must grant summary
20 judgment if it determines “that there is no genuine dispute as to any material fact and the movant
21 is entitled to judgment as a matter of law.” There is no way that the Court can effectively address
22 the second half of the summary judgment inquiry if there is any uncertainty as to what law it should
23 apply. This case must be stayed *now*, after discovery is complete but before summary judgment
24 motions are filed, to avoid rendering a decision using a legal standard that the Supreme Court is
25 actively reconsidering as this case proceeds. A final decision in *Merrill* will resolve those questions
26 and allow the Parties to conduct dispositive briefing under a definite standard.

27 Furthermore, the Court can be confident that it will not have to wait long before the legal
 uncertainty currently surrounding Section 2 claims is dispersed; a decision in *Merrill* will be

1 announced within the next six months. This gives the Parties a clear timeline, and permits the
2 Court an ample opportunity to conduct dispositive briefing and trial and announce a decision in
3 this case before 15th Legislative District voters participate in their next primary election for state
4 legislative races in August 2024. Factual evidence will still be preserved if a stay is granted now,
5 but the Court will avoid the danger of announcing a dispositive decision that will be vacated and
6 remanded in only a few months.

7 IV. CONCLUSION

8 As demonstrated, the issues before the Supreme Court in *Merrill* will likely be dispositive
9 of this litigation. *See Merrill*, 142 S. Ct. at 881; *Ardoin*, 2022 WL 2312680, at *1. At the very least,
10 the Supreme Court's disposition of that case will be informative to the parties' claims and defenses
11 in the instant case. By contrast, the risk of wasting party and judicial resources is significant where,
12 as here, some if not all of summary judgment and trial may need to be relitigated in their entirety
13 in light of new controlling law. Forcing both the parties and the Court to undertake this endeavor
14 when in all likelihood it will prove fruitless would directly undermine judicial economy and cause
15 significant hardship and prejudice to the parties.

16 For these reasons, the Court should stay this case pending the resolution of *Merrill*.
17 Furthermore, for the reasons described in the accompanying Motion to Expedite Consideration of
18 Renewed Motion to Stay Proceedings (*see* Dkt. # 124), this Renewed Motion should be considered
19 on an expedited basis.

1 DATED this 5th day of January, 2023.

2 Respectfully submitted,

3 s/ Andrew R. Stokesbary

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing document with the Clerk of the Court of the United States District Court for the Western District of Washington through the Court's CM/ECF System, which will serve a copy of this document upon all counsel of record.

DATED this 5th day of January, 2023.

Respectfully submitted,

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