

The Honorable Robert S. Lasnik

**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, and  
the STATE OF WASHINGTON,

Defendants,

and

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

Intervenor-Defendants.

No. 3:22-cv-5035-RSL

**INTERVENOR-DEFENDANTS’  
EMERGENCY MOTION TO  
STAY PROCEEDINGS**

**NOTE ON MOTION  
CALENDAR: November 17,  
2023<sup>1</sup>**

**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, Intervenor-Defendants Jose A. Trevino, Ismael G. Campos, and Alex Ybarra respectfully move the Court to stay all proceedings pending resolution of *Garcia v. Hobbs*, O.T. 2023, No 23-467 and the related *Trevino v. Soto Palmer*, O.T. 2023, No 23-484, both of which are currently pending in the Supreme Court of the

<sup>1</sup> The Local Rules are silent as to the proper date to note a motion for emergency stay. See LCR 7(d). Consequently, Intervenor Defendants have noted it for a date that gives the other parties time to respond, and the Court time to rule, but also respects the emergency nature of this Motion.

1 United States.<sup>2</sup> The State and Plaintiffs oppose this motion, but the Secretary of State takes no  
2 position.

## 3 II. INTRODUCTION

4 On August 10, 2023, this Court found that the boundaries of Washington Legislative  
5 District 15 “violate[d] Section 2’s prohibition on discriminatory results.” (*Soto Palmer* Dkt. #  
6 218 at 3.) Judgment was entered on August 11, 2023, (*Soto Palmer* Dkt. # 219), and Intervenor-  
7 Defendants filed their Notice of Appeal on September 8, 2023, (*Soto Palmer* Dkt. # 222).

8 The same day that Intervenor-Defendants appealed this Court’s *Soto Palmer* decision,  
9 the *Garcia* Court issued its decision in the related case of *Garcia v. Hobbs*, No. 3:22-cv-05152,  
10 2023 U. S. Dist. LEXIS 159427 (W.D. Wash. Sept. 8, 2023). (*See Garcia* Dkt. # 81.) Based on  
11 this Court’s decision in *Soto Palmer*, the *Garcia* panel majority opined that Mr. Garcia’s Equal  
12 Protection claim was moot. (*Id.* at 1–2.) Judge VanDyke dissented, explaining that, not only  
13 would he have reached the merits, but he would have found that the Washington Redistricting  
14 Commission’s racial gerrymandering in LD-15 violated the Equal Protection Clause. (*Garcia*  
15 Dkt. # 81-1.)

16 The nature of the related decisions in *Palmer* and *Garcia* resulted in separate appellate  
17 tracks. *See Garcia v. Hobbs*, O.T. 2023, No 23-467 (filing a jurisdiction statement in the United  
18 States Supreme Court in *Garcia*); (*Soto Palmer* Dkt. # 222) (filing a notice of appeal to the  
19 United States Court of Appeals for the Ninth Circuit in *Soto Palmer*).

20 Presently, this Court is proceeding with a remedial phase in *Soto Palmer*. (*See Soto*  
21 *Palmer* Dkt. # 230.) Currently, the *Soto Palmer* Parties are required to “meet and confer with the  
22 goal of reaching a consensus on a legislative district map that will provide equal electoral  
23 opportunities for both white and Latino voters in the Yakima Valley regions, keeping in mind  
24 the social, economic, and historical conditions discussed in the Memorandum of Decision.” (*Id.*)

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25  
26 <sup>2</sup> The Supreme Court granted a partial extension for a response in *Garcia*. While the State asked for a 60-  
day extension, the Court ordered that Responses are to be filed December 27, 2023.

1 If, by December 1, 2023, the Parties have not reached an agreement, they must file alternative  
2 remedial proposals and jointly identify three candidates to potentially serve as a special master.  
3 (*Id.* at 2–3.) Under this scenario, the Parties must then have their memoranda and exhibits  
4 submitted in response to the remedial proposals by December 22, 2023, and any reply submitted  
5 by January 5, 2024. (*Id.* at 3.)

6 Meanwhile, Intervenor-Defendants filed a petition for writ of certiorari before judgement  
7 with the Supreme Court of the United States, *Trevino v. Soto Palmer*, O.T. 2023, No 23-484,  
8 and the *Garcia* Plaintiff filed his jurisdictional statement with the Supreme Court appealing the  
9 related *Garcia* case, *Garcia v. Hobbs*, O.T. 2023, No 23-467. Mr. Garcia argues that his case is  
10 not moot and should be decided on the merits. (*See id.*) *Soto Palmer* Intervenor-Defendants argue  
11 that the Supreme Court should grant review of their case and hold it in abeyance pending the  
12 outcome in *Garcia*, which necessarily affects what (if any) remedy is available here. *Trevino v.*  
13 *Soto Palmer*, O.T. 2023, No 23-484.

14 Consequently, to further the important interests of judicial comity and efficiency,  
15 Intervenor-Defendants now seek a stay pending the result of the *Soto Palmer* and *Garcia* appeals  
16 that are presently pending before the Court of Appeals for the Ninth Circuit and the Supreme  
17 Court of the United States.

### 18 III. ARGUMENT

19 The power and discretion to stay a case “is incidental to the power inherent in every court  
20 to control the disposition of the cases on its docket with economy of time and effort for itself,  
21 for counsel, and for the litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). “How this  
22 can best be done calls for the exercise of judgment, which must weigh competing interests and  
23 maintain an even balance.” *Id.* at 254–55. “When deciding whether to grant a stay pending  
24 appeal, a court considers four factors: (1) whether the stay applicant has made a strong showing  
25 that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured  
26 absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested

1 in the proceeding; and (4) where the public interest lies.” *Duncan v. Bonta*, 83 F.4th 803 (9th  
2 Cir. 2023) (published slip op. at 4–5) (en banc) (quoting *Nken v. Holder*, 556 U.S. 418, 425–26  
3 (2009)). Of the four factors, likelihood of success on the merits and irreparable injury to the  
4 applicant are “most critical.” *Nken*, 556 U.S. at 434.

5 Most pertinently here, courts have the inherent power to stay proceedings while awaiting  
6 the outcome of another matter that may have a substantial or dispositive effect. *Am. Life Ins. Co.*  
7 *v. Stewart*, 300 U.S. 203, 215 (1937). A court is within its discretion to grant a stay when an  
8 independent case pending before another court presents substantially similar issues that “bear  
9 upon” the instant case. See *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863–64  
10 (9th Cir. 1997); see also *Robledo v. Randstad US, L.P.*, 2017 U.S. Dist. LEXIS 181353, at \*10  
11 (N.D. Cal. Nov. 1, 2017). Furthermore, “it is within the district court’s discretion to grant or  
12 deny [lengthy or indefinite] stays, after weighing the proper factors.” *Blue Cross & Blue Shield*  
13 *of Ala. v. Unity Outpatient Surgery Ctr., Inc.*, 490 F.3d 718, 723–24 (9th Cir. 2007).

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

22 When considering whether to stay a matter pending resolution of a separate related  
23 action, the Ninth Circuit has instructed that district courts consider the following factors and  
24 competing interests: (1) “the possible damage which may result from the granting of a stay”; (2)  
25 “the hardship or inequity which a party may suffer in being required to go forward”; and (3) “the  
26 orderly course of justice measured in terms of the simplifying or complicating of issues, proof,

1 and questions of law which could be expected to result from a stay.” *Lockyer v. Mirant Corp.*,  
2 398 F.3d 1098, 1110 (9th Cir. 2005) (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir.  
3 1962)).

4 Here, because these factors—both for a stay pending appeal (1) of the instant case to the  
5 Ninth Circuit (in addition to the pending petition for a writ of certiorari before judgment) and (2)  
6 of the related *Garcia* case to the Supreme Court—weigh decisively in favor of a stay, the Court  
7 should grant Intervenor-Defendants’ Emergency Motion to Stay.

8 **A. Intervenor Defendants Will Likely Succeed on the Merits of their Appeal in the**  
9 **Court of Appeals for the Ninth Circuit.**

10 Intervenor-Defendants are likely to succeed on the merits of their appeal for multiple  
11 reasons, not least of which is this Court’s misapplication of both the preconditions and totality  
12 of the circumstances analysis set forth in *Thornburg v. Gingles*, 478 U. S. 30 (1986). For  
13 example, “[t]he first Gingles condition refers to the compactness of the minority population, not  
14 to the compactness of the contested district.” *LULAC v. Perry*, 548 U. S. 399, 433 (2006)  
15 (quoting *Bush v. Vera*, 517 U. S. 952, 997 (1996)). Yet the Court erred by considering only the  
16 compactness of the outer boundaries in Plaintiffs’ demonstrative maps, and not the compactness  
17 of Hispanic voters within those boundaries. (See *Soto Palmer* Dkt. # 218 at 10.) Aside from Dr.  
18 Owens (Intervenor-Defendants’ expert), not a single expert in this case considered the  
19 compactness of the minority community. But the Court found this precondition satisfied.

20 The Court also erred in its racially polarized voting analysis, which seeks to determine  
21 whether a “minority group has expressed clear political preferences that are distinct from those  
22 of the majority.” *Gomez v. Watsonville*, 863 F. 2d 1407, 1415 (9th Cir. 1988). For example, this  
23 Court’s *Gingles II* analysis lasted all of one paragraph and was no “intensely local appraisal,”  
24 flatly ignoring the “present reality” in the Yakima Valley—namely, the landslide election of a  
25 Hispanic Republican over a White Democrat. See *Milligan*, 143 S. Ct. at 1503 (quoting *Gingles*,  
26 478 U. S., at 45–46). Put differently, the Court’s eschewal of the election results in the only

1 | contested election held under the challenged enacted map is incorrect as a matter of law. *Id.*  
2 | Indeed, to Undersigned Counsel’s knowledge, this Court is the only court to ever find that a  
3 | majority-minority citizen voting age population district, which resulted in the landslide election  
4 | of a minority candidate, somehow dilutes the voting power of that minority group. Such a result  
5 | is not likely to survive the appellate process.

6 |         Moreover, this Court’s totality of the circumstance analysis failed to apply the correct  
7 | legal standards in at least three ways: (1) the Court found that certain “usual burdens of voting”  
8 | evidenced an abridgment of the right to vote, *contra Brnovich v. DNC*, 141 S. Ct. 2321, 2338  
9 | (2021) (internal citation omitted); (2) the Court’s appraisal was neither “intense[]” nor “local,”  
10 | nor did it take into account “past and present realities,” *Milligan*, 143 S. Ct. at 1503, such as the  
11 | recent election of Nikki Torres; and (3) the Court continuously failed to identify the required  
12 | causal nexus between the challenged map and the purported discriminatory result, brushing aside  
13 | the evidence that partisanship, not race, drives voting patterns in the Yakima Valley, *see LULAC*  
14 | *v. Clements*, 999 F. 2d 831, 853–54 (5th Cir. 1993) (“Courts must undertake the additional  
15 | inquiry into the reasons for, or causes of, these electoral losses in order to determine whether  
16 | they were the product of ‘partisan politics’ or ‘racial vote dilution,’ ‘political defeat’ or ‘built-in  
17 | bias.’”) (internal citation omitted); *see also Baird v. Indianapolis*, 976 F. 2d 357, 361 (7th Cir.  
18 | 1992) (“[The VRA] does not guarantee that nominees of the Democratic Party will be elected,  
19 | even if [minority] voters are likely to favor that party’s candidates.”).

20 |         These are the most likely-to-be-reversed errors in the *Soto Palmer* decision. For any one  
21 | of these errors, the entire VRA decision could be reversed and the injunction vacated. Thus,  
22 | Intervenor-Defendants are likely to succeed on appeal, a “most critical” factor weighing heavily  
23 | in favor of granting the stay. *See Nken*, 556 U.S. at 434.

1 **B. Courts Frequently Stay Proceedings Pending Resolution of Separate Appellate**  
2 **Cases That May Substantially Affect the Instant Case.**

3 Courts frequently stay proceedings pending the outcome of a separate case before the  
4 Supreme Court of the United States when its decision may substantially affect, or otherwise  
5 prove dispositive of, the instant matter. As the Ninth Circuit has held, “[a] trial court may, with  
6 propriety, find it is efficient for its own docket and the fairest course for the parties to enter a  
7 stay of an action before it, pending resolution of independent proceedings which bear upon the  
8 case.” *Leyva*, 593 F.2d at 863–64.

9 Accordingly, district courts within the Ninth Circuit, including this Court, have stayed  
10 cases pending resolution of similar issues before the U.S. Supreme Court. *See, e.g., Waith v.*  
11 *Amazon.com Inc.*, 2020 U.S. Dist. LEXIS 223374 at \*6, \*20 (W.D. Wash. Nov. 30, 2020)  
12 (staying case pursuant to the Court’s “inherent power to manage [its] own docket[.]” where a  
13 petition for certiorari had been filed by the same defendant in separate litigation, even though  
14 “the probability of certiorari and reversal [was] not inordinately high”); *Deutsche*  
15 *Bank Nat’l Trust v. SFR Invs. Pool 1, LLC*, 2017 U.S. Dist. LEXIS 56295, at \*4–5 (D. Nev. Apr.  
16 11, 2017) (“[A] stay pending the disposition of the certiorari proceedings will simplify the  
17 proceedings and promote the efficient use of the parties’ and court’s resources. Resolving the  
18 claims or issues in this case before the Supreme Court decides whether to grant or deny the  
19 petitions could impose a hardship on both parties. A stay will prevent unnecessary or premature  
20 briefing on [the cases before the Supreme Court]’s impact on this case.”); *Canady*  
21 *v. Bridgcrest Acceptance Corp.*, 2020 U.S. Dist. LEXIS 161629, at \*5–6 (D. Ariz. Sept. 3,  
22 2020) (“[T]here is no longer a question of ‘if’ the Supreme Court will review the [dispositive  
23 lower court] decision [] – it has granted certiorari and briefing is now underway” and would end  
24 in “a decision before the end of the upcoming term, which is less than a year away.”).

25 Other circuits have likewise determined that “await[ing] a federal appellate decision that  
26 is likely to have a substantial or controlling effect on the claims and issues in” a case is “at least



1 a good . . . if not an excellent” reason to stay that case. *See, e.g., Miccosukee Tribe of Indians of*  
 2 *Florida v. S. Florida Water Mgmt. Dist.*, 559 F.3d 1191, 1198 (11th Cir. 2009).<sup>3</sup>

3 As this Court well knows, the issues in the related *Garcia* case and this case are  
 4 inextricably intertwined with one and other. Indeed, the majority’s decision in *Garcia* assumes  
 5 as much. (*See Garcia* Dkt. # 81) (premising its mootness conclusion based on this Court’s ruling  
 6 in *Palmer*). Consequently, the issues and legal standards now pending before the Supreme Court  
 7 in the related *Garcia* case are directly relevant to this case and will determine what (if any)  
 8 remedy remains here. And the Supreme Court must render a decision on *Garcia* because of the  
 9 appellate posture, increasing the likelihood that that case will directly affect this one, and soon.

10 Accordingly, this Court should exercise its inherent power and discretion to stay these  
 11 proceedings pending the outcome in the related *Garcia* case and the *Soto Palmer* appeal.

12 **C. The Supreme Court’s Ruling in the Related *Garcia v. Hobbs* Will Affect What, If**  
 13 **Any, Remedy Remains in This Case.**

14 As argued in the *Garcia* and *Trevino* filings now pending before the Supreme Court,  
 15 *Garcia* should have been decided on the merits before *Soto Palmer*. *Juris.* Statement in *Garcia*  
 16 *v. Hobbs*, O.T. 2023, No 23-467; *see also Trevino v. Soto Palmer*, O.T. 2023, No 23-484.  
 17 Appellant *Garcia* requested that the Supreme Court reverse or vacate the *Garcia* majority’s errant  
 18 jurisdictional dismissal and remand that case to the three-judge panel for consideration of the

19 <sup>3</sup> *See also, e.g., Nairne*, 2022 U.S. Dist. LEXIS 155706, at \*7 (staying case pending Supreme Court’s  
 20 decision in *Merrill* “in the interest of avoiding hardship and prejudice to the parties and in the interest of judicial  
 21 economy”); *Johnson v. Ardoin*, No. 3:18-cv-625 (M.D. La. Oct. 17, 2019) (ECF No. 133) (granting stay pending  
 22 en banc consideration of a Voting Rights Act issue); *United States v. Macon*, No. 1:14-CR-71, 2016 WL 7117468,  
 23 at \*5 (M.D. Pa. Dec. 7, 2016) (staying case pending Supreme Court resolution of similar issues); *Tel. Sci. Corp. v.*  
 24 *Asset Recovery Sols., LLC*, No. 15 C 5182, 2016 U.S. Dist. LEXIS 581, at \*8 (N.D. Ill. Jan. 5, 2016) (similar);  
 25 *McGregory v. 21st Century Ins. & Fin. Servs., Inc.*, No. 1:15-cv-98, 2016 WL 11643678 at \*4 (N.D. Miss. Feb. 2,  
 26 2016) (similar); *Bozeman v. United States*, No. 3:16-cv-1817-N-BN, 2016 U.S. Dist. LEXIS 140672 (N.D. Tx. July  
 11, 2016) (similar); *Fernandez v. United States*, No. 4:16-CV-409-Y, 2016 U.S. Dist. LEXIS 140192, at \*2 (N.D.  
 Tex. July 15, 2016) (similar); *Alford v. Moulder*, No. 3:16-CV-350-CWR-LRA, 2016 U.S. Dist. LEXIS 143292, at  
 \*7 (S.D. Miss. Oct. 17, 2016) (similar); *Kamal v. J. Crew Grp., Inc.*, Civil Action No. 15-0190 (WJM), 2015 U.S.  
 Dist. LEXIS 172578, at \*4 (D.N.J. Dec. 9, 2015) (staying action pending the Supreme Court’s decision in a separate  
 but related action, and citing decision of nine federal district courts staying similar cases); *Couick v. Actavis, Inc.*,  
 No. 3:09-CV-210-RJC-DSC, 2011 WL 248008, at 1 (W.D.N.C. Jan. 25, 2011) (similar); *Homa v. Am. Express Co.*,  
 No. CIV.A. 06-2985 JAP, 2010 WL 4116481, at \*9 (D.N.J. Oct. 18, 2010) (similar); *Michael v. Ghee*, 325  
 F.Supp.2d 829, 831-33 (N.D. Ohio 2004) (similar).



1 merits. Petitioners in *Trevino* (the *Soto Palmer* Intervenor-Defendants) requested that the Court  
2 grant Intervenor-Defendants’ petition for writ of certiorari before judgment and hold the *Soto*  
3 *Palmer* case in abeyance pending the results of *Garcia*. *Trevino v. Soto Palmer*, O.T. 2023, No  
4 23-484; *see also Merrill*, 142 S. Ct. at 879.

5 Should the Supreme Court follow this course of action and remand *Garcia*, two likely  
6 scenarios result. First, if the *Garcia* district court reaches the correct decision, Mr. Garcia will  
7 be victorious, and the *Garcia* district court can order the State to redraw its legislative map  
8 without race as the predominant consideration for LD-15. If the State appeals, the Supreme Court  
9 could hear both *Soto Palmer* and *Garcia* together. If the State does not appeal, and the panel’s  
10 order becomes final and conclusive, the Supreme Court could then vacate the *Soto Palmer*  
11 decision and remand to this Court to dismiss this proceeding as moot because the map enacted  
12 by the Redistricting Commission would be void, thereby eliminating the map that *Soto Palmer*  
13 Plaintiffs challenged. (*See Garcia* Dkt. # 81 1 at 11–12.)

14 Alternatively, if the *Garcia* district court follows through on what its majority  
15 telegraphed and finds that Washington’s Enacted Plan was not a racial gerrymander, the result  
16 would likely be an immediate appeal of the three-judge district court’s merits decision to the  
17 Supreme Court. At that point, the Supreme Court could—as in the alternative scenario above—  
18 consider both cases simultaneously, and issue a ruling that resolves the clash between equal  
19 protection and Section 2 claims.

20 In either eventuality, it makes little sense for proceedings in *Soto Palmer* to continue.  
21 Surely, the proceedings above will have a bearing on the outcome of this remedial process. Most  
22 poignantly, if the Supreme Court agrees that the *Soto Palmer* decision should be vacated and the  
23 case mooted, the current remedial process—in which the parties are now engaged—would be  
24 rendered a nullity. This alone warrants waiting to see how the Supreme Court addresses the  
25 issues now pending before it.  
26

1 **D. The Interests of Judicial Economy Favor Granting a Stay.**

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

8 As explained above, the likely result of the *Garcia* and *Soto Palmer* appeals (including  
9 the *Trevino* Petition) is that the current *Soto Palmer* remedial phase will be an exercise in futility.  
10 Judicial economy disfavors proceeding with an intensive remedial process—likely involving a  
11 special master and competing expert analyses—when that entire process will be rendered  
12 unnecessary by the Supreme Court’s decision in *Garcia*.

13 Regardless of where this Court stands on the merits of this case, or on any of the pending  
14 appellate proceedings, the judicially prudent and efficient way to handle the present situation is  
15 to pause the remedial proceedings in *Soto Palmer* while the Ninth Circuit and Supreme Court  
16 sort through and decide the myriad of related legal questions that touch both the *Soto Palmer*  
17 and *Garcia* cases. The likelihood that an appellate court will take *some* action that will directly  
18 affect the *Soto Palmer* remedial process is high. To have the presently pending remedial process  
19 in *Soto Palmer* lead to a new map and potentially new elected representatives, only to have those  
20 changes quickly reversed in either the appellate proceedings of this case or the related *Garcia*  
21 matter, would lead to voter confusion and increased costs and burdens on the State. This  
22 confusion is easily avoided. The Court should stay the *Soto Palmer* remedial proceedings while  
23 the appellate process is in progress.

1 **E. The Likely Hardship to the All Parties from Having to Litigate a Fact-Intensive**  
 2 **Remedial Process Favors Granting a Stay.**

3 Section 2 claims are fact- and resource-intensive inquiries. *Milligan*, 143 S. Ct. at 1503  
 4 (“Before courts can find a violation of § 2, therefore, they must conduct ‘an intensely local  
 5 appraisal’ of the electoral mechanism at issue, as well as a ‘searching practical evaluation of the  
 6 ‘past and present reality.’”) (citation omitted). It would be a hardship on all parties to participate  
 7 in a fact- and resource-intensive remedial process that may likely be unnecessary. What’s more,  
 8 imposing a map that requires more racial sorting, where none is required by Section 2, is a per  
 9 se harm to Intervenor and the people of the State of Washington. *See Cooper v. Harris*, 581  
 10 U.S. 285, 292–93 (2017).

11 Furthermore, a denial of stay would put the Defendants—and the voters of the greater  
 12 Yakima Valley region—at a grave risk that this Court may impose a remedial map that is then  
 13 vacated by the Supreme Court or the Court of Appeals. Going through the exercise of a remedial  
 14 process, only to later learn that it was all for naught, would be both result in an extreme waste of  
 15 party and judicial resources. Such a waste of time and resources would necessarily be harmful  
 16 to all parties, Plaintiffs included.

17 **F. A Stay is Unlikely to Harm Plaintiffs.**

18 By contrast, Plaintiffs are unlikely to suffer harm or prejudice from a stay because they  
 19 are likely to be in the same position either way. Until *Garcia* is resolved, Plaintiffs in this action  
 20 will have no basis for assurance that—even if they are 100% satisfied with the result of the  
 21 remedial process—this Court’s or the *Garcia* Court’s rulings will withstand appeal. Any  
 22 remedial plan enacted based on an errant decision in this matter or *Garcia* would be doomed  
 23 post-appeal. That means Plaintiffs have little prospect of being differently situated without a  
 24 stay as with one—except that, without one, they will have exhausted an enormous amount of  
 25 resources, including in legal fees. Either way, the path to any enduring victory for them will  
 26 inevitably be *through* whatever decisions are reached in the pending appeals.

1 It also must be emphasized that “[t]he harms that flow from racial sorting include being  
 2 personally subjected to a racial classification as well as being represented by a legislator who  
 3 believes his primary obligation is to represent only members of a particular racial group.”  
 4 *Bethune-Hill v. Va. State Bd. Of Elections*, 580 U.S. 178, 187 (2017) (internal quotation omitted).  
 5 That harm works against all Washingtonians, including Plaintiffs.

6 Therefore, the balance of the equities also weighs in favor of staying this case.

#### 7 IV. CONCLUSION

8 Because the standard for stay pending decisions in the appeals (1) of this case to the Ninth  
 9 Circuit, and (2) of *Garcia* to the Supreme Court, favors granting the stay, the Court should stay  
 10 this case pending the resolution of the those appeals.

11 Given the emergency nature of this stay, the expedited remedial timeline, and the appeals  
 12 pending before the Supreme Court of the United States, Intervenor-Defendants request responses  
 13 to this motion by November 13, 2023, and a ruling from this Court by November 17, 2023. After  
 14 November 17, Intervenor-Defendants will construe this emergency motion as denied.

15 Dated: November 8, 2023

16 Respectfully submitted,

17 *s/Andrew R. Stokesbary*

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**CERTIFICATE OF SERVICE**

I certify that all counsel of record were served a copy of the foregoing this 8th day of November 2023, via the Court’s CM/ECF system.

s/Andrew R. Stokesbary  
ANDREW R. STOKESBARY

*Counsel for Intervenor-Defendants*

**CERTIFICATE OF COMPLIANCE**

I certify that this Motion contains 3,741 words, in compliance with the Local Civil Rules.

s/Andrew R. Stokesbary  
ANDREW R. STOKESBARY

*Counsel for Intervenor-Defendants*

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