

The Honorable Robert S. Lasnik

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

SUSAN SOTO PALMER, et al.,  
Plaintiffs,  
v.  
STEVEN HOBBS, et al.,  
Defendants,  
and  
JOSE TREVINO, et al.,  
Intervenor–Defendants.

NO. 3:22-cv-5035-RSL  
DEFENDANT STATE OF  
WASHINGTON’S OPPOSITION TO  
INTERVENOR–DEFENDANTS’  
MOTION TO SUSPEND  
REMEDIAL PROCEEDINGS  
NOTE FOR MOTION CALENDAR:  
February 9, 2024

**I. INTRODUCTION**

This is now Intervenor–Defendants’ *sixth* attempt to stay this case and/or appeal, Dkt. ## 97, 123, 232, 258; DktEntry: 34-1, DktEntry: 48, *Soto Palmer v. Hobbs*, No. 23-35595 (9th Cir.), and their most frivolous one yet. Courts handling redistricting cases routinely proceed to remedial measures while liability appeals are pending—indeed, the Supreme Court just two weeks ago denied a motion to stay the remedial process in a case pending a liability appeal, *Michigan Independent Citizens Redistricting Commission v. Agee*, No. 23A641 (U.S. Jan. 22, 2024). Nonetheless, Intervenor–Defendants claim to have discovered a new doctrine that makes all the remedies ordered in those cases void for want of jurisdiction. They are wrong, and their

1 motion should be denied.

## 2 II. ARGUMENT

3 “The filing of a notice of appeal is an event of jurisdictional significance—it confers  
4 jurisdiction on the court of appeals and divests the district court of its control over *those aspects*  
5 *of the case involved in the appeal.*” *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58  
6 (1982) (per curiam) (emphasis added).

7 Intervenor’s jurisdictional argument fails because the remedial aspect of the case is—  
8 obviously—not involved in the appeal. That’s why Intervenor’s precise argument has been  
9 repeatedly rejected by courts. *See, e.g., Harris v. McCrory*, 1:13-cv-00949-WO-JEP, 2016 WL  
10 3129213, at \*1 (M.D.N.C. June 2, 2016), *aff’d sub nom. Harris v. Cooper*, 138 S. Ct. 2711  
11 (2018) (“Because the remedial phase of this case is not an ‘aspect [ ] of the case involved in the  
12 appeal,’ the Court retains jurisdiction over it.”); *Personhuballah v. Alcorn*, 155 F. Supp. 3d 552,  
13 558 (E.D. Va. 2016) (“B]ecause the remedial phase of this case is not an ‘aspect [ ] of the case  
14 involved in the [liability] appeal,’ we retain jurisdiction over it.”). In *Personhuballah*, the  
15 Supreme Court has implicitly agreed, summarily denying Intervenor’s subsequent motion for a  
16 stay. *See Wittman v. Personhuballah*, 578 U.S. 539, 542–43 (2016) (“The intervenor Members  
17 of Congress asked this Court to stay implementation of the Remedial Plan pending resolution of  
18 their direct appeal to this Court. We declined to do so.”).

19 Following this common-sense application of *Griggs*, courts routinely proceed with  
20 remedial measures even while liability appeals are pending. *See, e.g., Michigan Independent*  
21 *Citizens Redistricting Commission*, No. 23A641 (U.S. Jan. 22, 2024); *Harris*, 2016 WL  
22 3129213, at \*1; *Personhuballah*, 155 F. Supp. 3d at 558. A contrary rule—the rule Intervenor  
23 urge—would mean that successful plaintiffs in Voting Rights Act and 14th Amendment cases  
24 would be denied the fruits of their victories, as liability appeals collide with the *Purcell* principle  
25 and drag on past election-related deadlines.

1           The principal case Intervenorers rely on to support their preferred outcome—*Wright v.*  
 2 *Sumter*—is not to the contrary, as the *Wright* court itself recognized. That case explicitly  
 3 distinguished *Personhuballah*, noting that “in contrast” to that case “both the liability  
 4 determination and the first step of the Court’s remedy—delaying the school board election—  
 5 [we]re before the Court of Appeals.” *Wright v. Sumter Cnty. Bd. of Elections & Registration*,  
 6 1:14-cv-00042-WLS, 2018 WL 7366501, at \*4 (M.D. Ga. July 23, 2018). The court therefore  
 7 concluded “that the remedial phase of th[at] case” was “an aspect involved in the appeal.” *Id.*

8           Contrary to Intervenorers’ suggestion, *Coinbase v. Bielski*, 599 U.S. 736 (2023), changes  
 9 nothing about the standard set forth in *Griggs*. *Contra* Dkt. # 259 at p. 3. “The sole question  
 10 before th[e *Coinbase*] Court [wa]s whether a district court must stay its proceedings while the  
 11 interlocutory appeal on arbitrability is ongoing”—obviously not the question here. *Coinbase*,  
 12 559 U.S. at 740. In *Coinbase*, the Court straightforwardly applied *Griggs*, concluding that “[t]he  
 13 *Griggs* principle resolves this case . . . [b]ecause the question on appeal is whether the case  
 14 belongs in arbitration or instead in the district court,” and so “the entire case is essentially  
 15 ‘involved in the appeal.’” *Id.* at 741 (quoting *Griggs*, 459 U.S. at 58).

16           Here, of course, the remedial phase is not an aspect of Intervenorers’ appeal, nor could it  
 17 be since no remedy has been ordered. Intervenorers are well aware of this, having asked the Ninth  
 18 Circuit to hold their merits appeal in abeyance until a party appeals this Court’s remedial order  
 19 and obtaining that relief. *See* DktEntry: 59, *Soto Palmer v. Hobbs*, No. 23-35585 (9th Cir. Jan.  
 20 5, 2024) (granting Intervenorers’ motion to hold briefing in abeyance pending this Court’s order  
 21 adopting a remedial map).

22           Consistent with precedent and common sense, this Court should reject Intervenorers’ latest  
 23 efforts to delay this case.<sup>1</sup>

24  
 25  
 26 <sup>1</sup> In light of this Court’s order setting a hearing on February 9, 2024 the State understands that Intervenorers’  
 alternative request for a hearing is now largely moot. *See* Dkt. # 258 at p. 7–9. The State disagrees with Intervenorers’  
 contention that this Court is required to accept live testimony at the hearing, but if the Court is inclined to hear  
 testimony, the State defers to the Court’s preferences.

1 **III. CONCLUSION**

2 The State respectfully requests the Court deny Intervenor–Defendants’ Motion to  
3 Suspend Remedial Proceedings.

4 DATED this 5th day February 2024.

5  
6 ROBERT W. FERGUSON  
Attorney General

7 /s/ Andrew Hughes

8 ANDREW R. W. HUGHES, WSBA No. 49515

9 ERICA R. FRANKLIN, WSBA No. 43477

Assistant Attorneys General

10 CRISTINA SEPE, WSBA No. 53609

Deputy Solicitor General

andrew.hughes@atg.wa.gov

erica.franklin@atg.wa.gov

11 cristina.sepe@atg.wa.gov

12 *Attorneys for the State of Washington*

13 I certify that this memorandum contains 838  
14 words, in compliance with the Local Civil  
15 Rules.

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