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.	Nos. 24-1602 & 23-35595 D.C. No. 3:22-cv-5035 U.S. District Court for Western Washington, Tacoma **APPELLANTS' JOINT MOTION TO CONSOLIDATE**
Benancio Garcia III, Plaintiff – Appellant, v. STEVEN HOBBS, in his official capacity as Secretary of State of Washington, and the STATE OF WASHINGTON, Defendants – Appellees,	No. 24-2603 D.C. No. 3:22-cv-5152 U.S. District Court for Western Washington, Tacoma

JOINT MOTION TO CONSOLIDATE

Jose Trevino, Alex Ybarra, and Ismael Campos (Intervenor-Appellants in Nos. 23-35595 & 24-1602), together with Plaintiff Appellant Benancio Garcia III (Plaintiff-Appellant in No. 24-2603) (collectively, "Appellants") respectfully move to consolidate two appeals: the already consolidated *Soto Palmer v. Hobbs et al.*, Nos. 23-35595 & 24-1602, and *Garcia v. Hobbs et al.*, No. 24-2603. All of the appeals relate to the state legislative district map for the State of Washington, and the cases were heard in a combined trial below. Counsel for Appellants notified the other Parties on May 27 of their intent to file a motion to consolidate the appeals.[1]

To facilitate the consolidated appeals, Appellants propose to modestly expedite the existing scheduling in *Garcia* and modestly extend the existing schedule in the *Soto Palmer* consolidated appeals. The opening brief in *Garcia* is currently due on July 15, while the opening brief in the consolidated *Soto Palmer* is due June 7.

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[1] The State, which is a Defendant-Appellee in both *Soto Palmer* and *Garcia*, opposes the motion to consolidate. Secretary Hobbs, likewise a Defendant-Appellee in both cases, does not take a position on the motion to consolidate. Soto Palmer et al, who are Plaintiffs-Appellees in *Soto Palmer*, oppose the motion to consolidate.

PROPOSED SCHEDULE

June 28[2]	Consolidated opening brief due.
July 26[3]	Consolidated response briefs for all Appellees due.
August 16[4]	Consolidated reply due.

ARGUMENT

The reasons for consolidation are straightforward.

First, both appeals arise out of challenges to the same enacted Washington State Legislative maps, passed in early 2022. The Soto Palmer Plaintiffs brought a Voting Rights Act ("VRA") Section 2 vote dilution claim against the Enacted Map, while Mr. Garcia brought a Fourteenth Amendment racial gerrymandering claim against the same map, 3:22-cv-5152, ECF No. 1. The *Soto Palmer* district court, which declined to convene a three-judge panel, issued an August 10, 2023 order and injunction against the Enacted Map. The *Garcia* district court,

[2] Although Intervenor-Appellants took the streamlined extension for the merits appeal, No. 23-35595, the streamlined extension would remain available for the remedy half of that appeal, No. 24-1602, but, should consolidation be granted, Appellants will file by June 28.

[3] The streamlined extension would be available for this brief.

[4] The streamlined extension would be available for this brief.

composed of a three-judge panel, subsequently issued a September 8, 2023 order dismissing Mr. Garcia's claim as moot based on the *Soto Palmer* decision. Both orders were appealed.

Second, the cases were heard together at a joint trial in June 2023. The district court found that "that judicial efficiency will best be served by hearing the Section 2 and the equal protection claims together on June 5, 2023, the date on which Garcia is currently scheduled for trial before a three-judge district court." No. 3:22-cv-5035, ECF No. 136 at 5. The first day of trial was presided over only by the single-judge *Soto Palmer* district court, but the remaining three days, which featured testimony from witnesses relevant to both cases, were overseen by the full panel of three judges.[5] No. 3:22-cv-5035, ECF Nos. 206-09. The same judicial economies that motivated the joint trial similarly favor joint consideration by this Court by consolidating the appeals.

[5] Both cases were initially scheduled for concurrent 5-day trials from June 5-9. The *Soto Palmer* Plaintiffs then requested additional trial time from the district court, arguing five days were not sufficient. The district court granted the request, convening the single-judge *Soto Palmer* trial one business day earlier (without the other two judges comprising the three-judge *Garcia* panel). Nonetheless, the *Soto Palmer* Plaintiffs rested their case on June 7, with two additional days of allotted trial time remaining.

Third, both appeals feature common questions of law and fact concerning the use of race in the drawing of both the Enacted Map and Remedial Map, particularly with respect to Legislative District 15 under the Enacted Map (which *Soto Palmer* Plaintiffs alleged violated the VRA and which Mr. Garcia alleged violated the Equal Protection Clause). This was one of the reasons that the two cases were heard in a joint trial in the first place and remains a compelling reason for all the appeals to be to be consolidated and considered together.

Fourth, and finally, the *Garcia* panel majority opinion cited the *Soto Palmer* August 10, 2023 merits decision as the reason for dismissing Mr. Garcia's case as moot. Accordingly, Mr. Garcia's appeal, which is solely concerned with the mootness holding, is already inextricably entwined with the fate of *Soto Palmer*.

CONCLUSION

Appellants' motion to consolidate should be granted.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(B) and Circuit Rule 27-1(1)(d) because this motion contains 754 words spanning 5 pages, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 27(a)(2)(B) and 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook size 14-point font with Microsoft Word.

Dated: May 28, 2024

/s/ Jason Torchinsky
Jason Torchinsky

CERTIFICATE OF SERVICE

I hereby certify that on May 28, 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
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