UNITED STATES COURTS OF APPEALS
FOR THE NINTH CIRCUIT

SUSAN SOTO PALMER, *et al.*,

Plaintiffs-Appellees,

v.

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

Defendants-Appellees,

and

JOSE TREVINO, ISMAEL CAMPOS, and ALEX YBARRA,

Intervenors-Defendants-Appellants.

Nos. 23-35595 & 24-1602

D.C. No. 3:22-cv-05035-RSL

United States District Court for the Western District of Washington Tacoma, Washington

PLAINTIFFS-APPELLEES' OPPOSITION TO APPELLANTS' MOTION TO CONSOLIDATE

INTRODUCTION

This Court should deny the motion to consolidate this appeal with the *Garcia v. Hobbs* appeal. The *Garcia* appeal depends entirely on Intervenors-Appellants' ("Appellants") success in the *Soto Palmer* appeal, for which the Appellants lack standing. It therefore makes no sense to consolidate these cases. Instead, in the interest of judicial efficiency, the *Garcia* appeal should be held in abeyance, pending the resolution of the *Soto Palmer* appeal, as the State suggests. No. 24-1602, Dkt. Entry 33.1.

BACKGROUND

After a year and a half of litigation and a four-day trial, the district court found that Legislative District 15 in the Yakima Valley violated Section 2 of the Voting Rights Act and enjoined the district, entering judgment in favor of Plaintiffs. ECF Nos. 218, 219, *Soto Palmer v. Hobbs*, No. 3:22-cv-05035-RSL. A separate constitutional challenge to the same district was then dismissed as moot. *Garcia v. Hobbs*, No. 3:22-CV-05152-RSL-DGE-LJCV, 2023 WL 5822461 (W.D. Wash. Sept. 8, 2023). Following a robust remedial process, the *Soto Palmer* district court adopted a new map that remedied the Section 2 violation. ECF No. 290, *Soto Palmer v. Hobbs*, No. 3:22-cv-05035-RSL. The Appellants attempted to stay the district court's liability and remedial decisions, but those attempts were denied by the district court, motions panels of this Court, and the U.S. Supreme Court. *See, e.g.*,

Order, *Trevino v. Soto Palmer*, No. 23A862 (U.S. Apr. 2, 2024) (denying Intervenors' emergency application for stay of the district court's judgment and injunction). As such, the 2024 election cycle has already begun under the district court's remedial map. The State did not appeal the district court's liability or remedy rulings.

The *Soto Palmer* Appellants—present in the case as permissive intervenors only—have appealed the district court's liability and remedial rulings, and the *Garcia* Appellant has appealed the mootness dismissal of that case. These Appellants, through their shared counsel, now seek to consolidate these separate appeals.

ARGUMENT

It makes no sense to consolidate the *Soto Palmer* and *Garcia* appeals. As Appellants concede, the sole issue on appeal in *Garcia* is the dismissal of that case as moot in light of the decision in *Soto Palmer*. No. 24-1602, Dkt. Entry 31.1 at 4. And the *Soto Palmer* appeal, on which the *Garcia* appeal entirely depends, suffers numerous fatal flaws. The Court need not waste judicial time and resources considering *Garcia* unless or until there is an actual reason to do so.

The *Soto Palmer* appeal is doomed because Appellants lack standing. In denying a previous motion to stay these proceedings, a motions panel of this Court already found that Appellants failed to demonstrate standing. No. 24-1602, Dkt.

Entry 18.1 at 2. Though the motions panel noted that Appellants may press their standing arguments again at the merits stage, they will again fail because they face no "invasion of a legally protected interest." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The district court has not ordered Appellants "to do or refrain from doing anything." *Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013) (holding that non-governmental intervenor-defendants lack standing to appeal). And even if they cleared this hurdle, Appellants' face a steep uphill climb on the merits, as evidenced by the previous denials of a stay from this Court and the U.S. Supreme Court, No. 23-35595, Dkt. Entry 45; No. 24-1602, Dkt. Entry 18.1; Order, *Trevino v. Soto Palmer*, No. 23A862 (U.S. Apr. 2, 2024), and the denial of their petition for a writ of certiorari before judgment, Order, *Trevino v. Soto Palmer*, No. 23-484 (U.S. Feb. 20, 2024).

Given the *Soto Palmer* Appellants' lack of standing, there is no reason for the parties to brief (and for this Court to analyze and consider) the *Garcia* appeal when its success depends entirely on the success of the *Soto Palmer* appeal. Furthermore, the *Soto Palmer* Appellants cannot manufacture standing for themselves by attempting to hitch themselves to the *Garcia* Appellant. Mr. Garcia likely lacks standing to appeal in his own case because he is not injured: the legislative district he sought to have enjoined *was* enjoined, so he received all the relief he sought. But regardless, Mr. Garcia certainly does not have standing to appeal in *Soto Palmer*—

a case to which he is not a party, and which achieved the outcome he sought in his own case. The *Soto Palmer* Appellants cannot rescue their lack of standing by consolidating their appeal with their attorneys' other client's appeal, and their attempt to do so should not be granted.

The reasons Appellants give for consolidating the cases are unavailing. First, though the cases both address the same legislative district, the actual legal issues on appeal are quite different. In *Soto Palmer*, the Court must consider first whether Appellants have standing to appeal despite facing no harm, and second whether their various complaints about the district court's analysis under Section 2 of the Voting Rights Act have merit. The *Garcia* appeal concerns only whether the dismissal as moot was correct.

Second, the judicial economy that was served by holding a combined trial in the district court is not present here. It made sense to try *Soto Palmer* and *Garcia* at the same time to avoid having to call any common witnesses twice, and to avoid the single judge *Soto Palmer* district court having to sit for two separate trials. Those considerations are absent here, where there are no witnesses to call, and where briefing and consolidating the cases would force the Court to do work it might otherwise never have to do—consider *Garcia*—rather than focus only on this case, which likely will resolve both cases.

Despite the superficial similarities, the two cases address different issues, and the Appellants in the two cases seek different outcomes (despite being represented by the same counsel). Therefore, this Court should decide the *Soto Palmer* appeal first—starting with the critical issue of Appellants' lack of standing—and hold *Garcia* in abeyance during the pendency of the *Soto Palmer* appeal, as the State suggests.

CONCLUSION

The Court should deny Appellants' Motion to Consolidate and instead hold *Garcia* in abeyance pending the resolution of *Soto Palmer*.

June 7, 2024

Respectfully submitted,

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Dated: June 7, 2024

/s/ Annabelle E. Harless
Annabelle E. Harless

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 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 ACMS system, which will notify all registered counsel.

/s/ Annabelle E. Harless
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