The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON
AT TACOMA

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' MOTION TO STAY PROCEEDINGS

NOTE ON MOTION CALENDAR: OCTOBER 21, 2022

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 *Merrill v. Milligan,* No. 21-1086, 2022 U.S. LEXIS 1626 (U.S., Feb. 7, 2022) in the Supreme Court of the United States. Intervenor-Defendants contacted all parties for their position on this motion. Plaintiffs oppose this motion. The State of Washington "will likely oppose" this motion. The Secretary of State takes no position on this motion.

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II. INTRODUCTION

There can be little doubt that the Supreme Court of the United States intends to directly speak to the issues raised in this case in the near future. The importance and necessity of staying this case is apparent from examining the U.S. Supreme Court's recent actions in cases involving similar challenges to redistricting plans under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

Beginning with *Merrill v. Milligan*, No. 21-1086, and *Merrill v. Caster*, No. 21-1087 (collectively "*Merrill*"), plaintiffs brought vote dilution claims arguing that Alabama's 2021 congressional redistricting plan violated Section 2 of the Voting Rights Act by only including one majority-Black district rather than two. *Milligan v. Merrill*, No. 2:21-cv-1530 (N.D. Ala.); *Caster v. Merrill*, No. 2:21-cv-751 (M.D. Ala.). Specifically, the plaintiffs in *Milligan* brought discriminatory effects and intent claims under Section 2, as well as racial gerrymandering and intentional discrimination claims under the Equal Protection Clause, while the plaintiffs in *Caster* brought a discriminatory effects claim under Section 2.[1] The cases were consolidated by the district court for purposes of the preliminary injunction hearing and, on January 24, 2022, the three-judge court enjoined the redistricting plans for likely violating Section 2. After the district court denied Alabama's motion for stay of the preliminary injunction, the Supreme Court, on February 7, 2022, granted Alabama's application for a stay of the preliminary injunction in both *Milligan* and *Caster* and granted certiorari before judgment in *Caster*. The Supreme Court then consolidated *Milligan* and *Caster* for briefing and oral argument, with the question presented for both cases being "[w]hether the District Courts in these cases correctly found a violation of section 2 of the Voting Rights Act, 52 U.S.C. 10301."[2]

The Supreme Court subsequently acted in another redistricting case raising Section 2 claims in *Ardoin v. Robinson*, No. 21-1596, 2022 WL 2312680, at *1 (U.S. June 28, 2022), which

[1] In a third case that is not part of the consolidated *Merrill* cases before the Supreme Court, *Singleton v. Merrill*, No. 2:21-cv-1291-AMN, plaintiffs challenged Alabama's redistricting plan solely under the Equal Protection Clause. After granting plaintiffs' motion for preliminary injunction on Section 2 grounds in *Milligan* and *Caster*, the district court reserved ruling on the *Singleton* and *Milligan* plaintiffs' Equal Protection claims.

[2] U.S. Supreme Court, No. 21-1086 (Feb. 22, 2022), available at https://www.supremecourt.gov/docket/docketfiles/html/public/21-1086.html. The Supreme Court conducted oral argument in this case on October 4, 2022. A decision could be released at any time.

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challenged Louisiana's congressional redistricting plan. In that case, the Middle District of Louisiana issued a preliminary injunction on June 6, 2022, enjoining Louisiana's enacted congressional plan and ordering the creation of a remedial plan with two majority-Black districts. *Robinson, et al. v. Ardoin*, Nos. 3:22-cv-211-SDD-SDJ (M.D. La.) and 3:22-cv-214-SDD-SDJ (M.D. La.). The Fifth Circuit subsequently denied the Defendants' emergency motions for stay pending appeal. *Robinson v. Ardoin*, 37 F.4th 208, 232 (5th Cir. 2022). However, on June 28, 2022, the Supreme Court granted Louisiana's emergency application for stay and took three distinct steps. *Ardoin*, 2022 WL 2312680, at *1. First, it "stayed" the injunction. *Id.* Second, it granted "certiorari before judgment." *Id.* Third, it ordered that the case be "held in abeyance pending [its] decision in" *Merrill*. *Id.* Significantly, although the Supreme Court could have stayed the injunction without holding the case in abeyance or granting certiorari before judgment—thus permitting the Fifth Circuit to proceed with the appeal taken from the injunction—it instead chose to hold the case in abeyance pending *Merrill*. In doing so, the Court clearly signaled that its forthcoming articulation of Section 2 principles in *Merrill* will be the predicate to deciding *Robinson*.[3]

Finally, and most recently, the Middle District of Louisiana followed the Supreme Court's lead when it stayed a Section 2 challenge to Louisiana's state legislative redistricting plans pending the Supreme Court's decision in *Merrill*. *Nairne v. Ardoin*, No. 22-178-SDD-SDJ, 2022 U.S. Dist. LEXIS 155706, at *7 (M.D. La. Aug. 30, 2022). While the Middle District of Louisiana had previously enjoined Louisiana's congressional redistricting plan in *Robinson*, in *Nairne*, it acknowledged the major implications of the Supreme Court's decision to hold *Robinson* in abeyance pending the outcome of *Merrill* and explained that the "lay of the land has changed" as a result. *Id.* at *6. This is because the Supreme Court's order in *Robinson* had "unmistakably communicated that the outcomes in those cases are intertwined" in their implications for the legal

[3] Additionally, we note that the stay in *Merrill* was granted on a 5-4 split vote of the Justices with Chief Justice Roberts writing separately to express his view on the stay application. By contrast, the stay and other orders in *Robinson* appears to have been a 6-3 vote with Chief Justice Roberts supporting the grant of certiorari before judgment, the stay, and the order holding the case in abeyance.

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standards governing Section 2 challenges. *See id.* at *7. The Court determined there could no longer be "any serious debate that the Supreme Court has expressed that cases applying Section 2 are better held until *Merrill* is decided," *id.*, and thus "exercise[d] its discretion to stay th[e] case in the interest of avoiding hardship and prejudice to the parties and in the interest of judicial economy." *Id.*

Similar to *Milligan*, *Caster*, *Robinson*, and *Nairne*, Plaintiffs in the instant action now ask this Court for relief under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, and 42 U.S.C. § 1983, (ECF No. 70). Specifically, Plaintiffs here allege that the Washington State Redistricting Commission's redistricting plans for state legislative districts have the effect of denying Latino voters in the Yakima Valley region an equal opportunity to participate in the political process and to elect their candidates of choice, and that the map was adopted with the intent to discriminate on the basis of race, national origin, and/or language minority group status. *Id.* Because Plaintiffs bring both discriminatory intent and effects claims under Section 2, the legal issues raised here are on all fours with *Merrill*. As the Supreme Court has already signaled by staying and holding *Robinson* in abeyance, *Merrill*'s resolution will inevitably impact this proceeding and will likely be determinative. There is no "serious debate that the Supreme Court has expressed that cases applying Section 2 are better held until *Merrill* is decided," including Section 2 challenges to state legislative redistricting plans. *Nairne*, 2022 U.S. Dist. LEXIS 155706, at *7; *see also Covington v. North Carolina*, 316 F.R.D. 117, 124 (M.D.N.C. 2016) (three-judge court), *summarily aff'd*, 137 S. Ct. 2211 (2017) (noting that the same Section 2 legal standards used in the congressional redistricting context also apply to state legislative maps). Although "fundamental voting rights . . . are paramount," "ignoring the clear 'yield' sign from the Supreme Court and proceeding with this case now is not the best way to vindicate those rights." *Nairne*, 2022 U.S. Dist. LEXIS 155706, at *7.

In short, the Supreme Court has signaled that it will readdress binding precedent in a pending case, meaning this Court should exercise its inherent power to stay this closely-related case. Furthermore, because the interests of judicial economy and the significant hardship that the parties

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will likely suffer from having to litigate this fact- and resource-intensive matter twice weigh heavily in favor of a stay, Intervenor-Defendants now move the Court to stay these proceedings pending resolution of *Merrill*.

III. ARGUMENT

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

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

When considering whether to stay a matter pending resolution of a separate related action, the Ninth Circuit has instructed that district courts consider the following factors and competing

interests: (1) "the possible damage which may result from the granting of a stay"; (2) "the hardship or inequity which a party may suffer in being required to go forward"; and (3) "the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay." *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265 (9th Cir. 1962)).

Here, because these factors weigh decisively in favor of a stay, the Court should grant Intervenor-Defendants' Motion to Stay.

A. Courts Frequently Stay Proceedings Pending Resolution of Separate Appellate Cases Raising Similar Issues That May Substantially Affect the Instant Case.

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

Accordingly, district courts within the Ninth Circuit's footprint, including this Court, have stayed cases pending resolution of similar issues before the U.S. Supreme Court. *See, e.g.*, *Waith v. Amazon.com Inc.*, 2020 U.S. Dist. LEXIS 223374 at *6, *20 (W.D. Wash. Nov. 30, 2020) (staying case pursuant to the Court's "inherent power to manage [its] own docket[]" where a petition for certiorari had been filed by the same defendant in separate litigation, even though "the probability of certiorari and reversal [was] not inordinately high"); *Deutsche Bank Nat'l Trust v. SFR Invs. Pool 1, LLC*, 2017 U.S. Dist. LEXIS 56295, at *4-5 (D. Nev. Apr. 11, 2017) ("[A] stay pending the disposition of the certiorari proceedings will simplify the proceedings and promote the efficient use of the parties' and court's resources. Resolving the claims or issues in this case before the Supreme Court decides whether to grant or deny the petitions could impose a hardship on both parties. A stay will prevent unnecessary or premature briefing on [the cases before the Supreme Court]'s impact on this case."); *Canady v. Bridgecrest Acceptance Corp.*, 2020 U.S.

Dist. LEXIS 161629, at *5-6 (D. Ariz. Sept. 3, 2020) ("[T]here is no longer a question of 'if' the Supreme Court will review the [dispositive lower court] decision [] – it has granted certiorari and briefing is now underway" and would end in "a decision before the end of the upcoming term, which is less than a year away.").

Other circuits have likewise determined that "await[ing] a federal appellate decision that is likely to have a substantial or controlling effect on the claims and issues in" a case is "at least a good . . . if not an excellent" reason to stay that case. *See, e.g.*, *Miccosukee Tribe of Indians of Florida v. S. Florida Water Mgmt. Dist.*, 559 F.3d 1191, 1198 (11th Cir. 2009).[4]

As discussed above, there is no question that the legal standards under active consideration by the Supreme Court in *Merrill* are directly relevant to the issues presented to the Court in this case, just as they are directly relevant to *Robinson* (as the Supreme Court has signaled) and to *Nairne* (as the Middle District of Louisiana has said). Accordingly, this Court should follow the lead of courts within the Ninth Circuit, as well as other circuits, and exercise its inherent power and discretion to stay these proceedings pending the outcome in *Merrill*.

B. The Supreme Court's Forthcoming Decision in *Merrill v. Milligan* will Significantly Impact This Case.

The legal issues currently under active consideration by the Supreme Court in *Merrill* go the heart of the elements of a Section 2 vote-dilution claim and are directly relevant to those presented here, merely arising in the congressional rather than the state legislative context. *Compare Merrill*, 2022 U.S. LEXIS 1626, at *1 (noting that the question presented is "[w]hether

[4] *See also, e.g.*, *Nairne*, 2022 U.S. Dist. LEXIS 155706, at *7 (staying case pending Supreme Court's decision in *Merrill* "in the interest of avoiding hardship and prejudice to the parties and in the interest of judicial economy"); *Johnson v. Ardoin*, No. 3:18-cv-625 (M.D. La. Oct. 17, 2019) (ECF No. 133) (granting stay pending en banc consideration of a Voting Rights Act issue); *United States v. Macon*, No. 1:14-CR-71, 2016 WL 7117468, at *5 (M.D. Pa. Dec. 7, 2016) (staying case pending Supreme Court resolution of similar issues); *Tel. Sci. Corp. v. Asset Recovery Sols., LLC*, No. 15 C 5182, 2016 U.S. Dist. LEXIS 581, at *8 (N.D. Ill. Jan. 5, 2016) (similar); *McGregory v. 21st Century Ins. & Fin. Servs., Inc.*, No. 1:15-cv-98, 2016 WL 11643678 at *4 (N.D. Miss. Feb. 2, 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).

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the State of Alabama's 2021 redistricting plan for its seven seats in the United States House of Representatives violated Section 2 of the Voting Rights Act, 52 U.S.C. §10301") *with* Am. Compl., ECF No. 70 (challenging Washington's recently enacted state legislative redistricting plans because the plans allegedly "deny[] Latino voters in the Yakima Valley region an equal opportunity to participate in the political process and to elect their candidates of choice, in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301"). Because the same Section 2 legal standards that are used in the congressional redistricting context also apply to state legislative maps, *see Covington v. North Carolina*, 316 F.R.D. 117, 124 (M.D.N.C. 2016) (three-judge court), *summarily aff'd*, 137 S. Ct. 2211 (2017), and the Supreme Court has already stayed both *Caster* and *Robinson* and held *Robinson* in abeyance pending the outcome *Merrill*, there is no reason for this case to move forward without the anticipated guidance from the Supreme Court regarding these standards.

As discussed above, in *Merrill*, a three-judge federal district court concluded that Alabama's newly enacted congressional district map likely violated Section 2, and thus entered an injunction ordering that the map be completely redrawn. *See Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring) (describing procedural background). The Supreme Court in *Merrill* will address the nature of Section 2 vote-dilution claims to, *inter alia*, clarify how its standard interacts with the fast-evolving principles governing Section 2 claims. This intention is acknowledged in separate opinions by Justice Kavanaugh, Chief Justice Roberts, and Justice Kagan. *See Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring) ("The Court's case law" with respect to "whether an additional majority-minority congressional district . . . is required by the Voting Rights Act and not prohibited by the Equal Protection Clause . . . is notoriously unclear and confusing."); *id.* at 882-83 (Roberts, C.J., dissenting) ("*Gingles* and its progeny have engendered considerable disagreement and uncertainty regarding the nature and contours of a vote dilution claim."); *id.* at 889 (Kagan, J., dissenting) (noting that the Court believes "that the law needs to change").

The governing precedents will certainly be revisited here because the Supreme Court itself has subsequently indicated that *Merrill* warrants a litigation stay in Section 2 vote-dilution litigation. *See Ardoin,* 2022 WL 2312680, at *1. By granting certiorari before judgment and holding the *Robinson* case in abeyance pending *Merrill*, the Supreme Court has signaled with unmistakably clarity that its forthcoming *Merrill* decision is the predicate to resolving cases like *Robinson* and the instant matter, meaning such adjudication should await *Merrill*. If that course of action suits the Supreme Court, it should suit this Court for a Section 2 challenge to the State of Washington's redistricting plan.

This Court should follow the approach of the Middle District of Louisiana in the wake of *Robinson*, and likewise stay the instant state legislative redistricting challenge pending the outcome in *Merrill*. *See Nairne*, 2022 U.S. Dist. LEXIS 155706, at *7 ("The fundamental voting rights of Black Louisianans are paramount, but ignoring the clear 'yield' sign from the Supreme Court and proceeding with this case now is not the best way to vindicate those rights."). Accordingly, Intervenor-Defendants' motion to stay should be granted.

C. The Interests of Judicial Economy Favor Granting a Stay.

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

The interests of judicial economy weigh heavily in favor of a stay here. Again, the fact that *Merrill* will revisit controlling law directly impacting this litigation, including when Section 2 requires creating an additional majority-minority district, is of paramount consideration for this factor. For the same reasons that Defendants will be harmed absent a stay, continuing to press forward with this litigation when it is likely to be futile would be an extraordinary waste of judicial and party time and resources. The judicial inefficiency that would likely result from a liability

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finding from this Court pre-dating the Supreme Court's final decision in *Merrill* would be profound, including a significant risk that this case will have to be relitigated under the new standards likely to be announced by the Court. This Court's valuable time and resources would undeniably be best spent on one adjudication of this case, not two.

Importantly, this Court will not have long to wait for Supreme Court guidance. The Supreme Court has scheduled *Merrill* for oral argument on the second day of its October 2022 term,[5] just before the filing of this motion—making it very likely that the case will be decided before June 2023 (i.e., less than one year from now, and more than a year before Washington's next state House elections are held in 2024). Thus, a temporary delay occasioned by this stay will be reasonable and proportional to the needs of the case.

Because the interests of judicial economy counsel in favor of a stay here, this Court should stay proceedings in this case pending resolution of *Merrill*.

D. The Likely Hardship to the All Parties from Having to Litigate This Matter Twice Favors Granting a Stay.

Should this case proceed without the benefit of *Merrill's* forthcoming clarity, the hardship to all parties will be immense. The State could potentially be compelled to defend itself twice against Plaintiffs' claims, once in the current confusion and unclarity prevalent in Section 2 claims, and yet again after *Merrill* answers critical questions.

No party can reasonably contest that Section 2 claims are fact- and resource-intensive inquiries. *See NAACP v. Fordice*, 252 F.3d 361, 367 (5th Cir. 2001) (explaining that Section 2 cases require "an intensely local appraisal of the design and impact of the contested electoral mechanisms, a searching practical evaluation of the past and present reality and a functional view of political life"). Accordingly, the principles and standards that shape expert opinion and guide discovery in the case are likely to be modified to a degree that considerable effort and expense will be wasted on issues that may well have no relevance post-*Merrill*. Should this case be allowed to

[5] *See* U.S. Supreme Court, For the Session Beginning October 3, 2022, https://www.supremecourt.gov/oral_arguments/argument_calendars/MonthlyArgumentCalOctober2022.pdf (noting that Merrill was argued on Tuesday, October 4, 2022).

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proceed, the litigants could be placed in a position that would require them to relitigate this case in its entirety following the disposition of *Merrill*. These concerns clearly demonstrate the risk of wasted time and resources and resulting significant hardship to Intervenor-Defendants if these proceedings are not stayed.

In sum, denial of a stay would put the Defendants—and by extension the State's more than 7.7 million residents—at a grave risk that this Court may decide the case under a legal theory or standard that may no longer be applicable law. Going through the exercise of expensive discovery and trial only to learn later what legal standards govern Plaintiffs' claim would be both fruitless and futile, and ultimately prove to be an exercise in extreme redundancy. Such a waste of time and resources would be harmful to all parties, Plaintiffs included.

E. A Stay is Unlikely to Harm Plaintiffs.

By contrast, Plaintiffs are unlikely to suffer harm or prejudice from a stay. While Plaintiffs may argue that a delay in the case will result in a delay of a final judgment and an injunction to which they believe they are entitled, that is short-sighted. When the *Robinson* Plaintiffs obtained a similar injunction, the case was stayed and held in abeyance pending *Merrill*, and they will have to fight for the injunction again in some forum (or many) when the abeyance is lifted. The same is true here. Critically, until *Merrill* is resolved, Plaintiffs in this action will have no basis for assurance that, even if they prevail in this Court, success would not be short lived. Any judgment entering an injunction based on outdated law would be doomed to vacatur and remand for re-litigation under the Supreme Court's new guidance post-*Merrill.*

That means Plaintiffs have little prospect of being differently situated without a stay as with one—except that, without one, they will have exhausted an enormous amount of resources, including in legal fees. Either way, the path to any enduring victory for them must be *through* whatever standard *Merrill* sets, not around it. In this way, a stay would help Plaintiffs, not hurt them.

Plaintiffs are also unlikely to suffer any harm to their ability to obtain the relief they seek prior to the next applicable election cycle. Relief in the 2022 election cycle is no longer an option

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for them based on the Court's order denying Plaintiffs' Motion for Preliminary Injunction back in April 2022. *See* ECF No. 66 at 9-10 (holding it was "too close to the 2022 election to enjoin the use of the existing plan for this election cycle"). Because the next scheduled state legislative election in Washington will be held in 2024, likely well after the Supreme Court issues its decision in *Merrill* (since the *Merrill* decision will likely be issued before June 2023), the parties should still have sufficient time to fully litigate this case prior to the 2024 House elections.

In sum, there is no effective relief to be afforded to Plaintiffs under a governing standard that is likely to be revised. Therefore, the balance of the equities also weighs in favor of staying this case.

IV. CONCLUSION

For the aforementioned reasons, this Court should grant the relief requested herein.

DATED this 5th day of October, 2022.

Respectfully submitted,

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Counsel for Intervenor-Defendants

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 October, 2022.

Respectfully submitted,

s/ Andrew R. Stokesbary
Andrew R. Stokesbary, WSBA #46097

Counsel for Intervenor-Defendants