

No. 23-467

IN THE
Supreme Court of the United States

BENANCIO GARCIA III,
Appellant,

v.

STEVEN HOBBS, *ET AL.*,
Appellees.

On Appeal from the United States District Court
for the Western District of Washington

**SUSAN SOTO PALMER, FAVIOLA LOPEZ, ALBERTO MACIAS,
HELIODORA MORFIN, AND CATY PADILLA'S MOTION FOR LEAVE TO
INTERVENE AS APPELLEES AND FILE A MOTION TO DISMISS OR
AFFIRM**

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INTRODUCTION

This case arises from the consideration and outcome of dual cases challenging the composition of Washington State Legislative District 15 (“LD 15”). In January 2022, the Movants here (“Soto Palmer Plaintiffs”) filed suit challenging LD 15 as violating Section 2 of the Voting Rights Act (“VRA”). *See Soto Palmer v. Hobbs*, No. 3:22-cv-05035-RSL, 2023 WL 5125390 (W.D. Wash. Aug. 10, 2023). Nearly two months later, the Appellant before this Court, Mr. Garcia, filed suit alleging that LD 15 was a racial gerrymander in violation of the Equal Protection Clause, and his case was assigned a three-judge panel. At the request of counsel for Mr. Garcia and the State of Washington—a defendant in both cases—the *Soto Palmer* trial was continued from its May 2023 setting and set for trial at the same time as the later-filed *Garcia* matter in June 2023.¹

After trial, the *Soto Palmer* court issued its decision enjoining Defendants from implementing LD 15 in future elections because its configuration violated the Section 2 rights of Latino voters in the Yakima Valley region. Because the court concluded that LD 15 was unlawful on statutory grounds and enjoined its future use, the *Garcia* court concluded that the constitutional challenge to that now-enjoined district was moot, and dismissed Mr. Garcia’s case. Mr. Garcia now brings this direct appeal to

¹ The *Soto Palmer* plaintiffs opposed the delay of their trial. Because the judge assigned to the *Soto Palmer* matter also was a member of three-judge *Garcia* court, and because of some overlap in relevant witnesses, the two courts determined to hold trial concurrently for both cases. The *Soto Palmer* trial began a day earlier with testimony from expert witnesses that were relevant solely to the Section 2 case in order to ensure adequate trial time for all parties.

this Court, challenging various aspects of the district court's disposition of both the *Soto Palmer* and *Garcia* cases.

The *Soto Palmer* Plaintiffs respectfully seek leave to intervene as appellees in this appeal. The motion should be granted because the *Soto Palmer* Plaintiffs have a direct and substantial interest in the preservation of the judgment that they won in the *Soto Palmer* case invalidating LD 15 as a violation of Section 2 and ordering a remedial district that complies with the VRA—a judgment that none of the State Defendants have appealed. No party currently before the Court can adequately represent this interest. Intervention would neither prejudice the parties nor inconvenience the Court. Rather, it would provide this Court with the benefit of participation by the parties whose favorable judgment rendered Mr. Garcia's claim moot and who have the greatest interest in the preservation of that judgment.

The State of Washington does not oppose this motion and Secretary of State Hobbs takes no position. Mr. Garcia opposes this motion.

STATEMENT

1. On or around November 15, 2021, the Washington State Redistricting Commission transmitted a state legislative redistricting plan to the Washington legislature. On February 8, 2022, the legislature passed HCR 4407 which enacted the Commission's map with minor boundary amendments. RCW 44.05.110.

2. On January 19, 2022, *Soto Palmer* Plaintiffs filed their complaint challenging LD 15—centered in the Yakima Valley—as violating Section 2 of the Voting Rights Act. Complaint, *Soto Palmer v. Hobbs*, No. 3:22-cv-05035 (W.D. Wash.

Jan. 19, 2022), ECF No. 1. On March 15, 2022, Mr. Garcia filed his complaint challenging the same district as an unconstitutional racial gerrymander. Complaint, *Garcia v. Hobbs*, No. 3:22-cv-5152 (W.D. Wash. Mar. 15, 2022), ECF No. 1.

3. The trial in the *Soto Palmer* matter was originally scheduled to commence on January 9, 2023. Minute Order Setting Trial Date, *Soto Palmer v. Hobbs*, No. 3:22-cv-05035 (W.D. Wash. Mar. 16, 2022), ECF No. 46. It was rescheduled to May 1, 2023 in response to a motion by the State of Washington. Minute Order Setting Amended Trial Date, *Soto Palmer v. Hobbs*, No. 3:22-cv-05035 (W.D. Wash. Aug. 15, 2022), ECF No. 93. The trial in the *Garcia* matter was initially scheduled to begin on February 6, 2023, Minute Order Setting Trial Date, *Garcia v. Hobbs*, No. 3:22-cv-5152 (W.D. Wash. May 5, 2022), ECF No. 10, but after the district court issued its order resetting the trial in the *Soto Palmer* matter, the *Garcia* parties filed a stipulated motion requesting that the three-judge court “enter a new scheduling order extending all case dates to approximately one month after the corresponding dates in *Soto Palmer*.” Stipulated Motion to Modify Scheduling Order and Extend Trial Dates at 6, *Garcia v. Hobbs*, No. 3:22-cv-5152 (W.D. Wash. Aug. 22, 2022), ECF No. 26. The three-judge court obliged and reset the *Garcia* trial for June 5, 2023. Minute Order Setting Amended Trial Date, *Garcia v. Hobbs*, No. 3:22-cv-5152 (W.D. Wash. Aug. 23, 2022), ECF No. 27.

4. On January 20, 2023, in response to cross motions by the parties, the court issued an order adjusting the trial schedule in *Soto Palmer*, moving the *Soto Palmer* trial to be heard concurrently with the *Garcia* matter in June 2023 in the

interest of “judicial efficiency.” Order Denying Request for Leave to Amend and Continuing Trial Date at 5, *Soto Palmer v. Hobbs*, No. 3:22-cv-05035 (W.D. Wash. Jan. 20, 2023), ECF No. 136. The Order was explicit that, while the *trials* were consolidated, the *consideration* of the cases would remain on the separate track stipulated to by the parties in *Garcia*, with resolution of *Soto Palmer* to be followed by *Garcia*. *Id.* (“At the close of evidence at the consolidated trial, the undersigned will issue a decision on the Section 2 claim, and the three-judge district court will *then* consider the constitutional claim.”) (emphasis added).² The *Soto Palmer* trial commenced first on June 2, 2023 and continued on June 5, 2023 at which point the three-judge panel was also seated to consider the evidence related to the *Garcia* matter.

5. On August 10 and 11, 2023 respectively, the district court issued its Memorandum of Decision, *Soto Palmer v. Hobbs*, No. 3:22-cv-05035 (W.D. Wash. Aug. 10, 2023), ECF No. 218, and Judgment, *Soto Palmer v. Hobbs*, No. 3:22-cv-05035 (W.D. Wash. Aug. 11, 2023), ECF No. 219, in the *Soto Palmer* matter, finding in favor of the Plaintiffs on their Section 2 claim. Neither the Secretary of State nor the State of Washington appealed that decision.³ On September 8, 2023, the *Garcia* panel

² In its Order, the district court informed the parties that the decision on the Section 2 claim would be made before the consideration of the constitutional claim, in line with (1) the order in which the cases were filed, (2) the original scheduling of trials in the matters, and (3) the *Garcia* parties’ stipulated motion to modify the case schedule so the *Garcia* trial would take place one month after the *Soto Palmer* trial. *Id.* Whether these decisions were issued on the same day, as the Order originally stated they would be, or one followed shortly by the other as they ultimately were, the order of operations remained the same as announced in January 2023.

³ The *Soto Palmer* appeal and the pending Petition for Certiorari before judgment were filed solely by a group of individuals (“*Soto Palmer* Intervenors”) who, as the district court found,

issued an Opinion and Order dismissing Mr. Garcia’s constitutional claim as moot given the *Soto Palmer* decision invalidating and ordering redrawn the very same district that Mr. Garcia challenged. *Garcia v. Hobbs*, No. 3:22-cv-5152 (W.D. Wash. Sept. 8, 2023), ECF No. 81. Mr. Garcia now appeals that decision to this Court.

6. Simultaneously, the Intervenor-Defendants in *Soto Palmer*—represented by the same counsel as Mr. Garcia—have filed a notice of appeal and a Petition for Certiorari before Judgment with this Court. No State Defendant has appealed the *Soto Palmer* court’s judgment.

REASONS FOR GRANTING THE MOTION

Soto Palmer Plaintiffs have a direct and substantial interest in preserving the lower court’s order declaring Mr. Garcia’s claim moot following the *Soto Palmer* judgment because they have an interest in defending the favorable judgment they obtained. In light of this interest, the timeliness of this motion, and the lack of potential prejudice or delay arising from their intervention, *Soto Palmer* Plaintiffs ought to be granted leave to intervene.

There is no statute or rule that establishes a standard for intervening in a case in this Court or a court of appeals, but the Court has indicated that parties may look to Federal Rule of Civil Procedure 24 for guidance. See *Int’l Union, United Auto., Aerospace, and Agric. Implement Workers of Am., AFL-CIO, Local 283 v. Scofield*, 382

lacked any significant protectable interest in the litigation but were granted permissive intervention. As such, the *Soto Palmer* Intervenors lack standing to appeal the *Soto Palmer* court’s Section 2 decision. See, e.g., *Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013). Counsel for *Soto Palmer* Intervenors, who oppose *Soto Palmer* Plaintiffs’ claim for relief, also serve as counsel for Mr. Garcia in this matter.

U.S. 205, 217 n.10 (1965); *cf. Mullaney v. Anderson*, 342 U.S. 415, 416–17 (1952) (citing Fed. R. Civ. P. 21). Rule 24(a)(2) authorizes intervention as of right by a movant who “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” *Soto Palmer* Plaintiffs satisfy this standard for intervention as of right.

1. *Soto Palmer* Plaintiffs have a direct and substantial interest in “the subject of the action.” Mr. Garcia contends that his claim is not moot because of the possibility that the *Soto Palmer* judgment may be reversed on appeal and that the original legislative district, which Mr. Garcia challenged as a racial gerrymander, may be reinstated. Jurisdictional Statement at 21–27. But only private intervenors (represented by Mr. Garcia’s same counsel) have appealed that judgment—not the State or any state official. *See supra* note 3. Mr. Garcia also contends that his case is not moot because, if the *Soto Palmer* judgment stands, the remedial map addressing the Section 2 violation would necessarily be a racial gerrymander.⁴ *Id.* at 27–31. The legislative district that could be “impair[ed] or impede[d]” by this appeal, then, is not only the district Appellee the State of Washington defended at the *Garcia* trial (and which the *Soto Palmer* court invalidated) but also the prospective remedial district

⁴ The *Soto Palmer* Plaintiffs dispute this convoluted argument, which not only misunderstands the law governing Section 2 remedial districts and racial gerrymandering claims, but also misrepresents the harm Mr. Garcia pled below. Nonetheless, Appellant’s fundamentally flawed argument threatens the substantial interest that *Soto Palmer* Plaintiffs have in this proceeding.

the *Soto Palmer* court has ordered be drawn. *Id.* at 29. *Soto Palmer* Plaintiffs' direct and substantial interest in protecting the judgment below and their right to Section 2 relief from premature collateral attack is evident on its face.

The existing parties do not adequately represent *Soto Palmer* Plaintiffs' interest. This Court has described the adequate representation test, and any presumption of adequate representation, "as presenting proposed intervenors with only a minimal challenge" and has permitted intervention even "by a private party who asserted a related interest to that of an existing government party." *Berger v. North Carolina State Conference of the NAACP*, 597 U.S. ___, 142 S. Ct. 2191, 2203 (2022) (citing *Trbovich v. Mine Workers*, 404 U.S. 528 (1972)). *Soto Palmer* Plaintiffs overcome that "minimal challenge." Secretary Hobbs will not defend *Soto Palmer* Plaintiffs' interest because he avows "no position" on the claims asserted and the remedies sought in this case and *Soto Palmer*. Closing Statement of Def. Steve Hobbs at 1, 3, *Garcia v. Hobbs*, No. 3:22-cv-5152, (W.D. Wash. July 12, 2023), ECF No. 77. Although the State of Washington concedes the existence of a Section 2 discriminatory results violation, the State's position on remedy will depend on interests different from those of *Soto Palmer* Plaintiffs. The State and *Soto Palmer* Plaintiffs have also been at odds on the procedure and timeline for determining a Section 2 remedy.

Furthermore, the State of Washington noted its limited experience with briefing in this type of case, Mot. to Extend the Time to File a Motion to Dismiss or Affirm at 1, *Garcia v. Hobbs*, No. 23-467 (Nov. 3, 2023). However, Counsel for *Soto*

Palmer Plaintiffs have significant experience with this type of appellate briefing for redistricting cases and will provide the Court with a thorough argument to allow full consideration of the issues.

2. *Soto Palmer* Plaintiffs also satisfy the standard for permissive intervention under Rule 24(b)(1)(B), which permits intervention on a timely motion by a movant who “has a claim or defense that shares with the main action a common question of law or fact.” There is little question that common questions of fact exist between the *Garcia* and *Soto Palmer* matters. After all, these factual commonalities are what led the district court to hear most of both cases simultaneously at trial. Mr. Garcia himself has conceded that the claims in both cases are “inextricably intertwined.” Jurisdictional Statement at 7. In any event, *Soto Palmer* Plaintiffs’ substantial interest and unique position in this matter weigh heavily in favor of granting permissive intervention even if the Court were to find they do not meet the standard for intervention as of right.

3. *Soto Palmer* Plaintiffs’ motion to intervene is timely as required for either intervention as of right or permissive intervention. “Timeliness is an important consideration in deciding whether intervention should be allowed . . . but ‘[t]imeliness is to be determined from all the circumstances,’ and ‘the point to which [a] suit has progressed is . . . not solely dispositive.’” *Cameron v. EMW Women’s Surgical Center, P.S.C.*, 595 U.S. 267, 279 (2022) (quoting *NAACP v. New York*, 413 U.S. 345, 365–66 (1973)). Here, *Soto Palmer* Plaintiffs are moving for leave to intervene just the week after Appellant filed a Jurisdictional Statement before this Court in which it became

clear that they have a substantial interest. This interest was not present at the trial court level where Mr. Garcia challenged the constitutionality of a district that *Soto Palmer* Plaintiffs agreed was invalid under federal law, and where trial was held concurrently obviating the need to intervene. But now, for the first time, Mr. Garcia is attacking the judgment and relief ordered in *Soto Palmer* Plaintiffs' favor, including a speculative and premature attack on any remedial district the district court may order as a racial gerrymander. Accordingly, this motion is timely. *See, e.g., BNSF Railway Co. v. EEOC*, No. 18-1139 (Oct. 7, 2019) (granting intervention where intervenor filed his motion for leave to intervene two weeks after the filing of the party brief in which it became clear that the intervenor had a substantial interest not adequately protected by the existing parties).

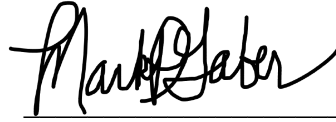
4. Allowing the *Soto Palmer* Plaintiffs to intervene as appellees would not cause undue delay, prejudice the parties, or inconvenience the Court. The addition of the *Soto Palmer* Plaintiffs would not require any adjustment of the current deadline in the case for appellees to respond to the Jurisdictional Statement by December 27, 2023, so it need not delay the Court's consideration.

CONCLUSION

For the foregoing reasons, this Court should grant the *Soto Palmer* Plaintiffs leave to intervene as appellees.

Dated: November 9, 2023

Respectfully submitted,



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