No. 23-467

# In the Supreme Court of the United States

BENANCIO GARCIA, III,
*Appellant*,

v.

STEVEN HOBBS, SECRETARY OF STATE OF WASHINGTON, ET AL.,
*Appellees*.

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

## Brief of *Amici Curiae* Susan Soto Palmer, Faviola Lopez, Alberto Macias, Heliodora Morfin, and Caty Padilla in Support of Appellees


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## INTERESTS OF *AMICI CURIAE*[1]

*Amici curiae* Susan Soto Palmer, Faviola Lopez, Alberto Macias, Heliodora Morfin, and Caty Padilla ("*Soto Palmer* Plaintiffs") are Latino voters in Washington's Yakima Valley region. On August 10, 2023, the District Court for the Western District of Washington found that Washington's Legislative District (LD) 15, also the subject of Mr. Garcia's racial gerrymandering challenge, diluted the votes of Latino citizens in violation of Section 2 of the Voting Rights Act. *Soto Palmer* Plaintiffs have an interest in preserving the *Soto Palmer* trial court judgment, the frustration of which is the explicit driving force of this appeal.

## SUMMARY OF ARGUMENT

Two cases involving the same Washington state legislative district are before this Court in an appeal and a petition for certiorari by parties represented by the same counsel. In this case, Mr. Garcia sought an injunction against the legislative district. In *Trevino v. Soto Palmer*, No. 23-484 ("*Soto Palmer*"), the intervenors sought to *defend* against an injunction sought by plaintiffs in that matter. Although the filings by Mr. Garcia and by the *Soto Palmer* intervenors have purported to raise complex issues for

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[1] Pursuant to this Court's Rule 37.6, counsel for *Amici Curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amici curiae*, their members, or their counsel has made a monetary contribution intended to fund the preparation or submission of this brief. The parties were provided notice more than 10 days in advance of the filing of this brief.

this Court to consider, one issue is clear: neither case should be before this Court.

This Court lacks jurisdiction over Mr. Garcia's appeal because the district court dismissed it for lack of subject matter jurisdiction. A jurisdictional dismissal by a three-judge district court does not trigger this Court's appellate jurisdiction under 28 U.S.C. § 1253 and thus Mr. Garcia's appeal must be heard by the Ninth Circuit, not this Court. Moreover, the three-judge court correctly concluded that Mr. Garcia's case was moot—the district he sought to have enjoined *was* enjoined—and this Court lacks jurisdiction to entertain Mr. Garcia's objection to *why* the result he desired—invalidation of the district—was obtained. Because this Court has no jurisdiction to entertain Mr. Garcia's appeal, the sole argument supporting the *Soto Palmer* intervenors' petition for certiorari before judgment—consolidating the two appeals before the same court—is without merit.

Even if the Court had jurisdiction of this appeal, it should not proceed to the merits phase, particularly not at this time. Mr. Garcia's entire argument contesting the mootness of his case rests upon the possibility that his lawyers' other clients—the *Soto Palmer* intervenors—will succeed in their appeal of the district court's conclusion that the district violates Section 2 of the Voting Rights Act. If his lawyers succeed in overturning the injunction against the district—again, the very relief Mr. Garcia wanted—then Mr. Garcia contends his constitutional claim against the district would revive. But this will not occur because the *Soto Palmer* intervenors lack

standing to appeal, having not been ordered to do or not do anything as a result of the injunction. There is no Article III jurisdiction for this Court to entertain bystanders' objections to the district court's application of federal law. Because the condition upon which Mr. Garcia's appeal rests—a success by the *Soto Palmer* intervenors on appeal—cannot come to pass, the district court's mootness determination in *this* case is undeniably correct. If the Court concludes it has jurisdiction to hear this appeal, it should summarily affirm on those grounds. In any event, this case should not be set for merits briefing given that it depends entirely upon the possibility of success by the *Soto Palmer* intervenors on appeal. If the Court concludes it has jurisdiction and declines to summarily affirm, it should at the very least hold this case in abeyance pending resolution of the *Soto Palmer* appeal.

Neither this case nor the *Soto Palmer* case belong before this Court at this time. This appeal should be dismissed for want of jurisdiction.

## ARGUMENT

### I. The Court lacks jurisdiction over this appeal.

This Court cannot hear Mr. Garcia's appeal. Under 28 U.S.C. § 1253, appeals to this Court from a three-judge district court are allowed only "from an order granting or denying . . . an interlocutory or permanent injunction." Because the district court did not issue such an order, this Court lacks jurisdiction. Mr. Garcia's specious allegations of "docket

manipulation" cannot manufacture jurisdiction where none exists under § 1253's plain text.

### A. The district court's order neither granted nor denied an injunction.

The district court's order in this case neither granted nor denied an injunction because it never actually reached the merits of Mr. Garcia's constitutional claim. Instead, the three-judge court held that the claim was moot because the decision of a different court provided Mr. Garcia *all* of his requested relief on statutory grounds. There was simply no potential injunction left for the three-judge court to order or even consider. Because Mr. Garcia's appeal does not rest on an order granting or denying an injunction, it is beyond the narrow set of cases § 1253's text assigns to the Court's mandatory docket and the Court lacks jurisdiction to hear it.

Precedent compels this result. Section 1253 must be construed narrowly pursuant to a longstanding "congressional requirement of strict construction to protect [the Court's] appellate docket." *Stainback v. Mo Hock Ke Lok Po*, 336 U.S. 368, 375 (1949). And the Court has consistently rejected interpretations of § 1253 that would expand the scope of its mandatory docket. *See, e.g.*, *Goldstein v. Cox*, 396 U.S. 471, 477-78 (1970); *Gonzalez v. Automatic Emp. Credit Union*, 419 U.S. 90, 101 (1974); *MTM, Inc. v. Baxley*, 420 U.S. 799, 804 (1975).

Applying this strict construction, the Court set out the following principle in *Gonzalez*: "when a three-judge court denies a plaintiff injunctive relief on grounds which, if sound, would have justified

dissolution of the court as to that plaintiff, or a refusal to request the convention of a three-judge court ab initio, review of the denial is available only in the court of appeals." 419 U.S. at 101.[2] Applying this principle, the Court ruled in *Gonzalez* that § 1253 did not allow direct appeal of a dismissal based on the plaintiff's lack of standing because that dismissal would have justified either not convening the three-judge court in the first place or dissolving the three-judge court, "leaving final disposition . . . to a single judge." *Id.* at 99-100.

In *MTM*, the Court reaffirmed and extended this principle, holding that a direct appeal under § 1253 from a denial of injunctive relief is not permissible where the order below did not depend on the merits of the constitutional claim. *MTM*, 420 U.S. at 804 (finding lower court's application of *Younger* abstention not directly appealable).

On other occasions, too, this Court has ruled that it cannot directly review a three-judge-court order dismissing a constitutional claim for lack of jurisdiction, including jurisdictional bars (like mootness) which can arise at any time after a three-judge court is convened. *See, e.g.*, *Wilson v. City of Port Lavaca,* 391 U.S. 352, 352 (1968); *Mengelkoch v.*

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[2] This principle is a logical extension of "the 'well settled' rule that the 'refusal to request the convention of a three-judge court, dissolution of a three-judge court, and dismissal of a complaint by a single judge are orders reviewable in the court of appeals,' not in the Supreme Court." *Ted Cruz for Senate v. Fed. Election Comm'n*, No. 19-CV-908 (APM), 2019 WL 8272774, at *4 (D.D.C. Dec. 24, 2019).

*Indus. Welfare Comm'n*, 393 U.S. 83, 84 (1968); *see also Ward v. Dearman*, 626 F.2d 489, 491 (5th Cir. 1980) ("When . . . a three judge court dismisses a case as moot, the appeal is to the court of appeals rather than to the Supreme Court.").

These cases foreclose mandatory jurisdiction here, and *Abbott v. Perez*, 138 S. Ct. 2305 (2018), did not overrule them, as Mr. Garcia suggests. In *Abbott*, unlike *Gonzalez* and *MTM*, the lower court resolved the merits of a constitutional claim against Texas's redistricting plans but stopped just short of expressly enjoining the plans. *Id.* at 2322. The question was whether the appeal was premature because no injunction had yet been ordered. The Court held that it still had jurisdiction under § 1253 because the lower court had *effectively* ordered an injunction by otherwise making clear that it would not allow the unlawful plans to be in place during the next election. *Id.* The Court also distinguished such orders from those that neither grant nor deny an injunction, which have "no practical effect whatsoever." *Id.* at 2323. And, as the Court made clear, its decision in *Abbott* did not displace the strict rule that § 1253 jurisdiction requires a grant or denial of an injunction (explicit or effective) and was not intended to dramatically expand the Court's mandatory jurisdiction. *Id.* at 2324.

In any event, *Abbott*'s "practical effects" test does not yield a different result in this case. To the extent the district court's order had any practical effect whatsoever, it was to leave undisturbed the injunction against LD 15 that the *Soto Palmer* court ordered.

That is, Mr. Garcia was effectively *granted* all of his requested relief—the district he challenged as a racial gerrymander has been permanently enjoined. Having not had his requested injunction denied because the district he challenges has already been enjoined in another case, Mr. Garcia cannot now appeal, and least of all to *this* Court. *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 333 (1980) ("A party who receives all that he has sought generally is not aggrieved by the judgment affording the relief and cannot appeal from it."). And his claim for declaratory relief alone cannot sustain § 1253 jurisdiction. *Mitchell v. Donovan*, 398 U.S. 427, 431 (1970).[3]

Nor does this Court's decision in *Moore v. Harper*, 600 U.S. 1 (2023), aid Mr. Garcia, as he contends. JS 2. In *Moore*, although the reasoning of the North Carolina Supreme Court opinion on review had been subsequently overruled, its injunction was still in effect. *Moore*, 600 U.S. at 15-16. Here, there is no possibility of the injunction against LD 15—again, the outcome Mr. Garcia *desired*—changing. *See infra* Part II.A. Mr. Garcia cannot direct his appeal to this Court.

### B. Mr. Garcia's claims of docket manipulation by federal judges are meritless and irrelevant.

The Court should reject Mr. Garcia's attempt to wriggle his way into the Court's mandatory docket by

[3] Mr. Garcia's speculation that the now-enjoined LD 15 might be replaced in the *Soto Palmer* remedial proceeding with a racially gerrymandered district is wrong as a factual matter but more importantly does not somehow render *this case* a live controversy.

lobbing baseless accusations of "docket games" at federal judges. JS 11. These claims are as distasteful and hollow as they are irrelevant to the question of § 1253 jurisdiction. Courts have significant discretion in managing their dockets. Here, the judges presiding over *Garcia* properly applied constitutional avoidance and judicial discretion to reach their conclusions. And the timing of the district court's decision—a major focus of Mr. Garcia's claim to jurisdiction—was both justified as a procedural matter and ultimately immaterial as a legal matter.

### 1. The district court properly applied constitutional avoidance.

The district court panel properly applied principles of constitutional avoidance and sound judicial discretion in issuing its decision after the order in *Soto Palmer* and declining to reach the then moot constitutional question.[4] The principle of constitutional avoidance requires that courts not adjudicate constitutional claims when the matter can instead be decided on statutory grounds. *See Lyng v.*

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[4] Mr. Garcia asserts that "[t]his case boils down to twenty-nine days—the period during which the panel majority could have decided this ripe, live case on the merits, but declined." JS 1. This is absurd. Mr. Garcia's real quarrel is clearly not with the *Garcia* panel for failing to issue its decision in the twenty-nine days after trial, but with the *Soto Palmer* court for issuing its opinion at any point before *Garcia*. He says as much: "[a] single district judge cannot divest a three-judge court of jurisdiction through clever manipulation of the docket." JS 4. But an appeal of the *Garcia* mootness determination is simply not a proper vehicle for Mr. Garcia to lodge an objection to the timing of the *Soto Palmer* court's order.

*Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988) ("A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them."). Consistent with this principle, courts in redistricting cases routinely do not reach constitutional claims. *See, e.g., League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 442 (2006); *Thornburg v. Gingles*, 478 U.S. 30, 38 (1986); *City of Los Angeles v. County of Kern*, 581 F.3d 841, 846 (9th Cir. 2009) ("[A] federal court should not decide federal constitutional questions where a dispositive nonconstitutional ground is available.").

Recently, in *Allen v. Milligan*, this Court affirmed the judgments of both the three-judge panel and single-judge court in the Northern District of Alabama which declined to decide plaintiffs' constitutional claims after finding in favor of the plaintiffs on their Section 2 claims. *See Allen v. Milligan*, 599 U.S. 1 (2023); *Singleton v. Merrill*, 582 F. Supp. 3d 924, 1035 (N.D. Ala. 2022) (citing to "the longstanding canon of constitutional avoidance" in declining to reach plaintiffs' racial gerrymandering claims after finding that the challenged districts violated Section 2 of the VRA); *Caster v. Merrill*, No. 2:21-cv-1536, 2022 WL 264819, at *84 (N.D. Ala. Jan. 24, 2022) (same); *Singleton v. Allen*, 2:21-cv-1291, 2023 WL 5691156, at *74 (N.D. Ala. Sept. 5, 2023), *appeal dismissed sub nom; Milligan v. Co-Chairs of Alabama Permanent Legis. Comm. on Reapportionment*, No. 23-12922-D, 2023 WL 6568350 (11th Cir. Oct. 3, 2023) ("In light of our decision to enjoin the use of the 2023 Plan on statutory grounds, and because Alabama's upcoming

congressional elections will not occur on the basis of the map that is allegedly unconstitutional, we decline to decide any constitutional issues at this time.").

Mr. Garcia says "[i]t is not clear that the constitutional avoidance canon can even be applied *across* two separate cases." JS 5-6 (emphasis in original). But this Court has done just that. In *Cardona v. Power*, 384 U.S. 672 (1966), this Court remanded a constitutional challenge to New York's English literacy test for voting. *Id.* at 673. Because this Court had simultaneously upheld the Voting Rights Act's statutory prohibition on literacy tests, *see Katzenbach v. Morgan*, 384 U.S. 641 (1966), this Court remanded *Cardona* on the suggestion that the statutory prohibition upheld in *Katzenbach* might render it unnecessary to reach the constitutional question in *Cardona*. *Cardona*, 384 U.S. at 674.

Properly applying the principle of constitutional avoidance led the *Garcia* court to decline to adjudicate Mr. Garcia's moot constitutional claim. The *Soto Palmer* court first decided the statutory question and issued its order invalidating LD 15 under the VRA. The three-judge panel then determined, "before addressing the constitutional issue, whether a decision on that question could have entitled [Mr. Garcia] to relief beyond that" which he would receive as the de facto result of the adjudication of the statutory claim in *Soto Palmer*. *See Lyng*, 485 U.S. at 446. As explained above and in the *Garcia* panel's opinion and order, Mr. Garcia could receive no further relief. Op. and Order Dismissing Pls.' Claim as Moot, 2-3, *Garcia v. Hobbs*, No. 3:22-cv-5152 (W.D. Wash.

Sept. 8, 2023), ECF No. 81. Because "no additional relief would have been warranted, a constitutional decision would have been unnecessary and therefore inappropriate." *Lyng*, 485 U.S. at 446. The *Garcia* panel, therefore, properly applied the principle of constitutional avoidance in declining to decide Mr. Garcia's moot constitutional question.

Turning this time-honored principle on its head, Mr. Garcia insists that his constitutional claim "should have been decided first" because "a constitutional racial gerrymander claim alleges the map was invalid from the moment it was enacted, whereas a VRA claim alleges the map becomes vote dilutive in effect at some point after its passage." JS 4-5. He cites no authority for this distinction because none exists. Racial gerrymanders and racially dilutive redistricting plans under Section 2 are invalid at the same moment: when they are enacted or otherwise imposed. A racial gerrymander cannot exist until "the boundaries of individual districts" exist. *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 262 (2015). And voters do not have standing to bring a racial gerrymandering claim unless they can show that they reside within "the boundaries of . . . *specific electoral districts*." *Id.* at 263 (emphasis in original). Similarly, a map that has the effect of racial vote dilution under Section 2 violates federal rights the moment it is enacted or otherwise imposed. Like racial gerrymandering claims, such cases are often filed and adjudicated by trial courts shortly after the map is enacted and well before an election can occur under the challenged districts. *See, e.g.*, *Caster*, 2022 WL 264819 at *84; *Robinson v. Ardoin*, 605 F. Supp.

3d 759, 858 (M.D. La. 2022); *Petteway v. Galveston Cnty.*, No. 3:22-CV-57, 2023 WL 6786025, at *55 (S.D. Tex. Oct. 13, 2023), *aff'd*, 86 F.4th 214 (5th Cir. 2023), *reh'g en banc granted, opinion vacated*, 86 F.4th 1146 (5th Cir. 2023).

**2. The *Soto Palmer* case was filed first, and Mr. Garcia's counsel conceded that his case "necessarily turn[ed]" on resolution of the *Soto Palmer* case.**

The sequencing of decisions by the *Garcia* and *Soto Palmer* courts also makes sense as a procedural matter. *Soto Palmer* was filed *two months* before *Garcia* and was scheduled for trial before *Garcia*. Indeed, the parties in *Garcia*, including Mr. Garcia, agreed to extend all case deadlines to one month after the corresponding dates in *Soto Palmer*. *Garcia*, No. 3:22-cv-5152, ECF No. 26. This schedule changed only after the close of discovery in *Soto Palmer*, when Judge Lasnik ordered a consolidated trial for judicial efficiency but noted that he would still issue a decision on the first-filed Section 2 claim before the three-judge court considered Mr. Garcia's constitutional claim. *Soto Palmer v. Hobbs*, No. 3:22-cv-05035, ECF No. 136 at 5.

This expected sequence of judicial decision-making also aligned with the correct understanding of every party, including Mr. Garcia's counsel,[5] that "resolution of the claim in *Garcia* necessarily turns on

[5] Mr. Garcia's attorneys also represent the Intervenor-Defendants in *Soto Palmer*.

the claims in [*Soto Palmer*]." *Soto Palmer*, No. 3:22-CV-05035, ECF No. 109 at 3. As a legal matter, though, the sequence and timing of decisions was irrelevant to the substantive outcome. Even if the *Soto Palmer* decision had been released on the same day or after the *Garcia* decision, the three-judge court (which included Judge Lasnik) could nevertheless have held—soundly—that a forthcoming ruling in *Soto Palmer* rendered Mr. Garcia's constitutional claim moot. *Infra* Sec. II.

The bottom line: Mr. Garcia waited months after *Soto Palmer* to file his racial gerrymandering challenge, stipulated to delay his own case to *ensure* it would be decided after that case, and agreed that his own claim would *depend* on the outcome in that case. Full of regret, he now blames Article III judges for his own strategic miscalculations.

Finally, Mr. Garcia's claim that Judges Lasnik and Estudillo "weaponize[d] docket management to effectively evade this Court's review" is nonsensical. JS 13. No amount of docket manipulation could actually insulate a decision from this Court's appellate review. If this appeal had proceeded to the Ninth Circuit (as it should have), it could have still made its way to this Court's docket on writ of certiorari. This would have also avoided Mr. Garcia's self-imposed concern that the appeals in *Garcia* and *Soto Palmer* are proceeding on separate appellate

tracks.[6] This Court has no jurisdiction under § 1253 to entertain Mr. Garcia's arguments on direct appeal.

## II. The Panel Properly Ruled that Mr. Garcia's Claim is Moot.

If the Court finds that it has jurisdiction to hear Mr. Garcia's case on direct appeal, it should summarily affirm the district court's dismissal of Mr. Garcia's case as moot. First, the entire premise of the argument that *Garcia* is not moot turns on the longshot success of an appeal in a separate case in which the petitioners lack standing to appeal. Second, Mr. Garcia does not have a live case or controversy arising from the speculative harm he may or may not experience by the imposition of a currently non-extant remedial district in separate litigation.

### A. The pending petition for certiorari before judgment in a separate case does not suffice to make this case not moot.

The entire premise of Mr. Garcia's argument that his case is not moot hinges on the possibility of what may happen in the *Soto Palmer* case on appeal. *See* JS 23. Indeed, contrary to his arguments elsewhere, Mr. Garcia all but concedes that without a reversal there, this case is moot. *Id.* at 23-25. However, the parties bound by the *Soto Palmer* court's judgement, the State of Washington and Secretary Hobbs, have not appealed that decision, and the time to file a notice of

[6] Whatever burden Mr. Garcia claims from these dual-track appeals is ultimately his own fault, or, more accurately, it is the fault of his counsel, who filed the *Soto Palmer* appeal in the Ninth Circuit but filed the *Garcia* appeal here.

appeal has lapsed. Recognizing this reality, Mr. Garcia's attorneys are attempting to keep this case alive by appealing the *Soto Palmer* ruling on behalf of their other clients and asking this Court to reinstate a legislative district that they argued on behalf of Mr. Garcia was unconstitutional. Putting aside the dubious posture in which Mr. Garcia's attorneys find themselves as they attempt to serve the purported interests of two sets of clients with opposite views of the legality of the same legislative district, this scheme suffers from a fatal flaw: the *Soto Palmer* intervenors lack standing to appeal because they have no legally cognizable interest.

To have standing, a litigant must demonstrate "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (internal quotations omitted). Intervenors seeking to appeal must also meet this Article III requirement. *Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013) ("[S]tanding 'must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance'") (internal citation omitted); *Diamond v. Charles*, 476 U.S. 54, 56, 68 (1986). This ensures that "the decision to seek review. . . is not to be placed in the hands of 'concerned bystanders,' who will use it simply as a 'vehicle for the vindication of value interests.'" *Diamond*, 476 U.S. at 62 (internal citation omitted)—or as here as a vehicle for their attorneys' other client to command the attention of this Court to review a case that has been properly declared moot.

The *Soto Palmer* intervenors cannot establish standing to appeal. In granting them only permissive intervention in that case, the *Soto Palmer* district court expressly found that "intervenors lack a significant protectable interest in th[e] litigation." No. 3:22-cv-05035, ECF No. 69 at 5. Two of the three, Ybarra and Campos, do not even reside or vote in LD 15, and thus have no cognizable interest in the district's configuration. *United States v. Hays*, 515 U.S. 737, 744-45 (1995) (a voter who "resides in a racially gerrymandered district … has been denied equal treatment" but other voters "do[] not suffer those special harms"); *Ala. Legislative Black Caucus*, 575 U.S. at 263; No. 3:22-cv-05035, ECF No. 191 at 4. None of the three has alleged any improper racial classification in that case—nor could they—and a blanket interest in "proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits [the intervenors] than it does the public at large[,] does not state an Article III case or controversy." *Lujan*, 504 U.S. at 573-74; *Allen v. Wright*, 468 U.S. 737, 754-55 (1984).

Neither does Intervenor Ybarra's status as a state legislator, in a district not being challenged in either case, suffice to confer standing. Any interest in avoiding delays to the election and knowing ahead of time which voters will be in his district are not particularized enough for Article III standing—every party in the *Soto Palmer* litigation (and the public) has an interest in an orderly election, and no legislator is entitled to advance notice of his constituents. Importantly, the current *Soto Palmer* remedial schedule *guarantees* Ybarra would know his

district's boundaries before the candidate filing deadline. As such, granting the relief Mr. Garcia seeks, including a stay of *Soto Palmer*, would *harm* Ybarra. Nor does Ybarra have standing because of any argument that the remedial process *might* make his reelection campaign more costly or difficult. No legislator is guaranteed reelection (let alone an easy one), and to assert standing, a litigant "must do more than simply allege a nonobvious harm." *Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951 (2019).

Moreover, the *Soto Palmer* district court has not ordered the *Soto Palmer* intervenors "to do or refrain from doing anything." *Hollingsworth*, 570 U.S. at 705 (holding that non-governmental intervenor-defendants lack standing to appeal); *Republican Nat'l Comm. v. Common Cause of Rhode Island*, 141 S. Ct. 206 (2020) (Mem.) (denying stay of consent decree between state officials and plaintiffs because "no state official has expressed opposition" and intervenor "lack[s] a cognizable interest in the State's ability to enforce its duly enacted laws") (internal quotations omitted). Intervenors have no role in enforcing state statutes or implementing any remedial plan.[7] Thus, the intervenors' only interest in reversing the *Soto Palmer* court's order is "to vindicate the [] validity of a generally applicable [Washington] law." *Hollingsworth*, 570 U.S. at 706. But this Court has repeatedly held that "such a 'generalized grievance,'

[7] In fact, they did not even avail themselves of the opportunity to submit a proposed remedial map, though they were permitted to do so.

no matter how sincere, is insufficient to confer standing." *Id.* Neither do the *Soto Palmer* intervenors have a concrete or imminent interest in the appeal of the as-yet unchosen remedial plan. Any alleged constitutional harm that would arise from the remedial plan is purely speculative and not ripe for litigation. *See Cooper v. Harris*, 581 U.S. 285, 290 (2017); *Hays*, 515 U.S. at 745.

Even if this Court had jurisdiction to decide this appeal, Mr. Garcia's sole argument depends upon the success of appellants in a separate case who lack standing to appeal. The only question before this Court is thus: is the district Mr. Garcia sought to have enjoined already enjoined, thus rendering his suit moot? The answer is undeniably "yes," and the Court should summarily affirm on that basis if it does not dismiss the appeal because it should have been brought to the Ninth Circuit.

To the extent that any questions remain about the finality of the *Soto Palmer* decision, however, this case should be held in abeyance pending the resolution of *Soto Palmer*.

### B. Mr. Garcia's claim for declaratory relief cannot stand on mere speculation that the remedial LD 15 will be a racial gerrymander.

Mr. Garcia cannot sustain a live controversy by speculating that the district court in another case will impose a remedial plan that unconstitutionally racially gerrymanders. That contention is factually wrong, too speculative to support jurisdiction, and

must await a new claim against the imposed remedial map.

The *Soto Palmer* remedial record directly contradicts Mr. Garcia's baseless assertion that it is "inevitable" and an "imminent certainty" that the *Soto Palmer* remedial process will result in an unconstitutional racial gerrymander. JS 8, 20. The *Soto Palmer* Plaintiffs—the only party to submit any proposed remedial plans—have submitted five proposed remedial plans, all of which were created by a mapmaker who "did not consider race or racial demographics in drawing the remedial plans" and who "did not make visible, view, or otherwise consult any racial demographic data while drawing districts." Dec. 1, 2023, Decl. of Dr. Oskooii at 4, *Soto Palmer*, No. 3:22-CV-05035, ECF No. 245-1; Plaintiffs' Br. in Support of Remedial Proposals at 3-4, *Soto Palmer*, No. 3:22-CV-05035, ECF No. 245. The purported threat that the district court's order would necessarily result in "more racial gerrymandering," JS 29, therefore has not been realized and does not reflect the reality of the ongoing *Soto Palmer* remedial process. This alone should end Mr. Garcia's claim that he will inevitably face any harm from racial gerrymandering arising from the remedial plan enacted by the federal district court.

Even if the *Soto Palmer* district court were to impose a remedial plan that considered race, as Mr. Garcia's counsel acknowledged in *Soto Palmer* Intervenors' Amended Answer, a legislative district is not an unconstitutional racial gerrymander if the VRA requires its race-conscious drawing. Intervenor-

Defs.' Am. Answer at 34, *Soto Palmer*, No. 3:22-CV-05035, ECF No. 103. To the extent Mr. Garcia now argues that any remedial plan ordered to comply with the VRA is a racial gerrymander, such an argument is foreclosed by this Court's precedent. *See Milligan*, 599 U.S. at 41. Furthermore, Mr. Garcia's counsel has conceded throughout this litigation that VRA compliance is a compelling interest. *See* Compl., *Garcia*, No. 3:22-cv-5152, ECF No. 1 ("[C]omplying with Section 2 of the Voting Rights Act is a compelling interest …"); *Soto Palmer*, No. 3:22-CV-05035, ECF No. 103 at 34 (same). This accords with the longstanding practice of this court. *Cooper v. Harris*, 581 U.S. 285, 285 (2017).

Finally, even if the remedial map were to be drawn on the basis of race, the fact remains that Mr. Garcia would have to challenge *that* map.[8] Mr. Garcia has not challenged, and indeed cannot yet challenge, a remedial district that does not yet exist. His challenge of the invalidated LD 15 and the evidence that he leveraged at trial in support of his claim that the 2021 Washington Redistricting Commission engaged in unconstitutional racial gerrymandering in the creation of the invalidated LD 15 do not transfer to a wholly different map imposed by a court. Mr. Garcia's reliance on *North Carolina v. Covington*, 138 S. Ct. 2548 (2018), on this point is misplaced. In *Covington*, the plaintiffs contended that newly redrawn district lines were "mere continuations" of

[8] And Mr. Garcia would have to prove he has standing to challenge that district. *See United States v. Hays*, 515 U.S. 737, 744-45 (1995).

prior lines which the district court found with "sufficient circumstantial evidence" were drawn with racial predominance. *Id.* at 2553. Here, the *Soto Palmer* Plaintiffs' remedial submissions—the only ones received by the district court—bear no resemblance to the version of LD 15 Mr. Garcia sought to have enjoined, and the district court, having heard the evidence, has cast serious doubt in any event on Mr. Garcia's allegations that the now-enjoined LD 15 was drawn predominantly on the basis of race. *Garcia*, No. 3:22-cv-5152, ECF No. 81 at 4-5.

LD 15, the district challenged by Mr. Garcia, no longer exists, and the predicate of his racial gerrymandering claim—that Section 2 did not require a Latino opportunity district in the Yakima Valley—has been rejected. Mr. Garcia cannot now clutch at speculative straws to claim his case is not moot. The *Soto Palmer* remedial process, along with well-established precedent regarding VRA remedial districts, demonstrate that Mr. Garcia's "inevitable" harm will almost certainly not come to pass; nor is it even a certainty that he would have standing to challenge it if it did. This is precisely why speculation does not create an active stake in litigation both as a general rule and as applied here to Mr. Garcia.

## CONCLUSION

For the foregoing reasons, the Court should dismiss Mr. Garcia's appeal for lack of jurisdiction because only the Ninth Circuit has jurisdiction to hear it. If the Court concludes it has jurisdiction, it should either summarily affirm the dismissal as moot or alternatively hold this case in abeyance pending

resolution of the *Soto Palmer* appeal, upon which Mr. Garcia's appellate arguments in this case depend.

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Respectfully submitted,

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