NO. 24-2603

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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.

On Appeal from the U.S. District Court for the Western District of Washington
Case No. 3:22-cv-05152-RSL-DGE-LJCV
The Honorable Robert S. Lasnik, David G. Estudillo, and Lawrence J.C. VanDyke

APPELLEE STATE OF WASHINGTON'S ANSWERING BRIEF

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I. INTRODUCTION

After a bipartisan commission adopted Washington's 2020 redistricting plan and the Washington Legislature ratified it in an overwhelming bipartisan vote, a group of plaintiffs filed a Voting Rights Act case (*Soto Palmer v. Hobbs*) challenging Legislative District 15 (LD 15) in the plan. They alleged that LD 15 violated Section 2 by denying Hispanic voters an equal opportunity to elect candidates of their choice. Months later, Appellant Benancio Garcia filed this case, claiming that the same district had been racially gerrymandered.

The district court in *Soto Palmer* held that LD 15 violated Section 2 of the VRA and must be redrawn. The Legislature declined to propose a new plan, so the court appointed a special master and adopted a new plan remedying the Section 2 violation. After the *Soto Palmer* district court invalidated LD 15 and redrew it, the three-judge panel in this case dismissed Garcia's claim as moot, concluding that Garcia's challenge to an invalidated district no longer presented a live controversy.

The panel's mootness ruling was plainly correct. After deciding *Soto Palmer*, this Court should thus affirm that Garcia's claim is moot. His complaint argued that the Redistricting Commission engaged in racial gerrymandering in drawing LD 15. But the district drawn by the Commission no longer exists, so even if they had engaged in racial gerrymandering, there would be no relief a court could offer.

Garcia asserts that this case remains live because the remedial map adopted by the *Soto Palmer* court supposedly exacerbates his constitutional injury, but his challenge was to the now-invalidated LD 15—not the remedial district. His complaint alleging that the Commission engaged in racial gerrymandering cannot create jurisdiction for an appeal alleging that an entirely unrelated decisionmaker—the *Soto Palmer* district court—engaged in racial gerrymandering.

Garcia's request that this Court revive his moot claim is particularly weak because it is rooted in baseless accusations and phantom claims. He argues that the panel majority pretextually mooted his case but offers no evidence that any such mischief occurred. Because *Soto Palmer* had invalidated LD 15 on statutory grounds, the three-judge panel correctly declined to offer an advisory opinion on Garcia's constitutional claim. This is exactly what they should have done and what the Supreme Court routinely does.

In short, the district challenged by Mr. Garcia no longer exists. The Court should affirm dismissal of this case as moot. But if the Court decides this case is not moot (or reverses the *Soto Palmer* liability finding), it should remand the case to the three-judge panel to decide the Equal Protection claim in the first instance.

II. STATEMENT OF ISSUE

Garcia challenged LD 15 as a racial gerrymander and sought an order invalidating that district and ordering a new district. In *Soto Palmer*, the district court invalidated the district and drew a new district. As a result of the *Soto Palmer* order, the district challenged by Garcia no longer exists. Is his suit therefore moot?

III. STATEMENT OF THE CASE

A. The Structure and Mandate of the Washington Redistricting Commission

Washington's Constitution provides for a bipartisan Redistricting Commission to draw state legislative and congressional districts. The Commission consists of four voting members and one non-voting chair. *See* Wash. Const. art. II, § 43(2). The voting members are appointed by the leaders of the two largest political parties in each house of the Legislature. *Id.* For the 2021 redistricting cycle, the four voting Commissioners were April Sims (appointed by the House Democratic Caucus), Paul Graves (House Republican Caucus), Brady Piñero Walkinshaw (Senate Democratic Caucus), and Joe Fain (Senate Republican Caucus). SER-55.

Under Washington law, the Commission must agree, by majority vote, to a redistricting plan by November 15 of the redistricting year, and then transmit the plan to the Legislature. Wash. Rev. Code § 44.05.100(1); Wash. Const. art. II, § 43(2). Thus, the Commission cannot propose a plan without bipartisan agreement among the Commissioners. Upon submission of the plan by the Commission, the

Legislature has 30 days to amend the plan by a two-thirds vote. Wash Rev. Code § 44.05.100(2). The redistricting plan becomes final upon the Legislature's approval of any amendment or after expiration of the 30-day window for amending the plan, whichever comes first. Wash Rev. Code § 44.05.100(3).

Washington's redistricting statute sets forth requirements for redistricting plans, including that district lines coincide with boundaries of political subdivisions to the extent possible, that communities of interest be kept together as much as practicable, that city and county splits be kept to a minimum, and that districts be contiguous and compact. Wash. Rev. Code § 44.05.090.

B. Recent Litigation and Research on Racially Polarized Voting in the Yakima Valley

In addition to state-law requirements, the 2021 Commission was the first in State history to grapple with Section 2 of the Voting Rights Act. The 2020 Census showed dramatic growth of Washington's Hispanic population, centered in the Yakima Valley region. *See* SER-50–51. In the years leading up to 2021, three separate cases found violations of the federal Voting Rights Act or Washington Voting Rights Act related to local elections in that region. In *Montes v. City of Yakima*, a federal district court concluded that Yakima's at-large voting system for city council elections violated Section 2 of the VRA. 40 F. Supp. 3d 1377 (E.D. Wash. 2014). The court reviewed evidence regarding the three *Gingles* factors and concluded that each was satisfied with respect to Latino voters in Yakima. *Montes*,

40 F. Supp. 3d at 1390–1407. Most significant for the Redistricting Commission's purposes was the court's analysis of the second and third *Gingles* factors—which ask whether "the minority group is 'politically cohesive[,]'" and whether the "'white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate.'" *Id.* at 1387 (quoting *Thornburg v. Gingles*, 478 U.S. 30, 51 (1986)). On the second *Gingles* factor, the court reviewed statistical analysis examining ten recent elections and concluded that plaintiffs had "made a strong showing that Latino voters in Yakima have clear political preferences that are distinct from those of the majority, and that a significant number of them usually vote for the same candidates[.]" *Id.* at 1405 (quotations omitted). On the third *Gingles* factor, the court looked at both statistical and historical evidence, concluding "that the non-Latino majority in Yakima routinely suffocates the voting preferences of the Latino minority." *Id.* at 1407. The court also found that the totality of the circumstances demonstrated that the City's electoral process was not equally open to Latino voters. *Id*. at 1408–14.

In *Glatt v. City of Pasco*, a challenge to Pasco's at-large voting system, a federal district court entered a consent decree in which the parties stipulated to each *Gingles* factor as well as a finding that the totality of the circumstances showed an exclusion of Latinos from meaningfully participating in the political process. *See* ECF No. 16 ¶¶ 15–22, Partial Consent Decree, *Glatt v. City of Pasco*,

No. 4:16-cv-05108-LRS (E.D. Wash. Sep. 2, 2016) (SER-187–200); *see also* ECF No. 40, at 29, Mem. Op. and Order, *Glatt v. City of Pasco*, No. 4:16-cv-05108-LRS (E.D. Wash. Jan. 27, 2017); SER-201–56. And in *Aguilar v. Yakima County*, No. 20-2-0018019 (Kittitas Cnty. Super. Ct.), a challenge to the at-large voting system used in Yakima County, the court approved a settlement agreement finding that the conditions for a violation of the Washington Voting Rights Act had been met in Yakima County, including a showing of racially polarized voting. *See* SER-257–67.

The Commissioners were well aware of these cases and the implications they had for their own work. Commissioner Graves testified that the lawsuits meant that the Commission "better spend some time thinking about Section 2, and what it might mean in the Yakima Valley." SER-140–41. Commissioner Fain understood *Montes* to mean that Section 2 might apply to legislative maps in the Yakima area. SER-124. Commissioner Walkinshaw was aware of VRA lawsuits in the Yakima Valley and stated publicly that it was his priority to create a VRA-compliant district in the Yakima Valley. SER-101–02. And finally, Commissioner Sims testified that because "there had already been lawsuits filed and won, that stated that there should be majority Latino districts created at the local level in Yakima Valley," she "believe[d] that based on that, [the Commission] needed to do the same thing at the state level." SER-84.

Commissioner Sims also reviewed research regarding the potential need to create a Hispanic opportunity district in the Yakima Valley. Commissioner Sims reviewed a report from MGG Redistricting Lab that "f[ou]nd that Yakima has a clear pattern of racial polarization, with strong *Gingles* 2 and 3 findings." SER-142; *see also* SER-84–96; SER-142–48. The report noted "strong cohesion between Hispanic and native voters in their support of Hispanic candidates, while white voters block these candidates of choice for the minority coalition from ever reaching office." SER-142. Commissioner Sims also considered a 2013 presentation from Dr. Matt Barreto in which he analyzed numerous elections in the Yakima area and found racially polarized voting between white and Hispanic voters. SER-87–88; SER-149–57.

C. The Commissioners' Redistricting Proposals, Revisions, and Negotiations

On September 21, 2021, shortly after the Commission received Census data, and shortly after the *Aguilar v. Yakima County* settlement, the four voting Commissioners publicly released their first proposed legislative maps demonstrating their priorities for redistricting. SER-55–56; *see* SER-158–68.

Soon after that, the Senate Democratic Caucus retained Dr. Matt Barreto of the UCLA Voting Rights Project to evaluate the extent of racially polarized voting in the Yakima Valley and assess the proposed maps' compliance with the VRA. *See* 2-ER-128–52. Each Commissioner reviewed or read about Dr. Barreto's report.

SER-79–80; SER-110; SER-130; SER-169. In his analysis, Dr. Barreto concluded there was "clear" evidence "of racially polarized voting" in the Yakima Valley. 2-ER-143. He opined that to comply with the VRA, the Commission needed to include a district with a majority-Hispanic citizen voting age population (CVAP) that allowed Latino voters to elect candidates of their choice. 2-ER-144–51.

Following this report, Commissioners Sims and Walkinshaw released new proposed maps designed to better comply with the VRA by increasing the Hispanic CVAP in the Yakima Valley district that eventually became LD 15, while also improving on the previous maps in other respects. *See* SER-169–75. Meanwhile, Commissioners Fain and Graves obtained a legal opinion from lawyers at Davis Wright Tremaine LLP, who opined that a majority-minority district in the Yakima Valley was not legally necessary. *See* SER-176–86. The opinion noted that it was primarily a legal analysis and that the authors had not "conduct[ed] factual research regarding demographic trends, voting behavior, [or] election results[.]" SER-176.

The Commissioners negotiated extensively in an effort to reach bipartisan compromise. At trial, each voting Commissioner testified as to their priorities in negotiating and drafting maps. Commissioner Sims's priorities included "comply[ing] with the law . . . regarding how districts were drawn," and "draw[ing] maps that reflected the political realities of our state, that increased civic engagement and voter participation, [and] that respected communities of interest[ ]

and tribal sovereignty." SER-83. Commissioner Walkinshaw was "guided by a principle of keeping communities together." SER-99. He sought to "divid[e] as few communities as possible," promote "community interest[s], minimize[ ] city and county split[s] . . . create[ ] the most opportunity for communities to have fair representation of their choosing[,]" "respect[ ] the needs of tribal nations," and preserve "transportation corridors in communities that are economically and geographically connected." SER-99–100. Commissioner Fain prioritized partisan competitiveness and keeping communities of interest together, including school districts and tribes. SER-114, SER-116–17. He also sought to increase the number of majority-minority districts and comply with all statutory and constitutional requirements. SER-116, SER-111–12. Commissioner Graves prioritized "encourag[ing] electoral competition" and keeping communities of interest together. SER-138.

And of course, befitting a bipartisan negotiation, each Commissioner prioritized gaining (or at least not losing) partisan advantage through the negotiations. As Commissioner Graves put it, exchanges of "partisan performance . . . was kind of the meat and potatoes of [the Commissioners'] negotiation." SER-134.

Finally, each Commissioner also prioritized complying with the Voting Rights Act, though as trial made clear, they differed in their understanding of what

that meant. *See* SER-102 (Walkinshaw); SER-175 (Sims); SER-139–40 (Graves); SER-108–09 (Fain). Given the VRA concerns, voter ethnicity was clearly an important consideration in the negotiations over LD 15, but it was just one factor. For Commissioner Graves, ethnicity was "on par with" partisan performance, but he testified he did not sacrifice any traditional redistricting criteria to achieve a majority-Hispanic district. SER-138–39. For Commissioner Sims, voter ethnicity was just one element she looked at, along with "[t]otal population, geography, communities of interest, cities and towns, natural borders, highways," and partisan performance. SER-90; *see also* SER-91 (explaining that voter ethnicity was a factor, but not the most important one). For Commissioner Walkinshaw, LD 15 was shaped by "a lot of different pieces," with the primary concerns being partisan competitiveness, creating a Hispanic CVAP majority, "unif[ying] city and county lines, [and] unifying . . . the ancestral lands of the Yakama, all the way down to the Columbia River." SER-96. And Commissioner Fain was largely indifferent to the racial or ethnic makeup of districts, so long as the overall map increased competition statewide. SER-118–22[1]; *see also* 1-ER-8 n.4 (summarizing Commissioners' testimony).

[1] Indeed, when Commissioner Fain voted on the framework that ultimately became the Commission's plan, he understood the framework to incorporate particular partisan metrics, but did not recall racial or ethnic metrics being part of the framework. SER-123.

Throughout the redistricting process, the Commissioners also sought and received extensive public feedback. They held 17 public outreach meetings, consulted with Washington's 29 federally recognized Indian Tribes, and conducted 22 regular business meetings. SER-270–71; SER-98. They received testimony from hundreds of Washingtonians and thousands of comments. *See* SER-270–71. They met with many stakeholders, including advocates from the Yakima area. *See, e.g.*, SER-92–93.

D. The Commission's Adopted Plan and the Legislature's Amendments to the Plan

As the deadline approached, each Commissioner remained committed to their overarching goals, and the sticking points, including with respect to LD 15, primarily centered on partisan performance. SER-131–33. Following a chaotic final day and evening of negotiations, the Commissioners ultimately voted unanimously to approve a legislative redistricting plan just before the midnight deadline. The plan consisted primarily of an agreed set of partisan metrics, which was then translated by staff into a map. SER-76–77; SER-94; SER-123; SER-135–36. On November 16, 2021, the Commission transmitted the final map to the Legislature. SER-57 ¶ 73. In the map, LD 15 is 73% Hispanic and, according to estimates based on the 2020 American Community Survey, approximately 51.5% Hispanic by CVAP. *Id.* ¶ 76.

The Legislature exercised its statutory prerogative to make minor amendments to the Plan. The Legislature made changes to LD 15 without altering its demographic make-up. *Id.* ¶ 75; *see* Wash. Rev. Code § 44.05.100(2) (providing that Washington's Legislature may amend the Commission's plan, including by making changes of up to "two percent of the population of any legislative . . . district"). On February 8, 2022, the Legislature passed House Concurrent Resolution 4407, adopting the amended redistricting plan. H.R. Con. Res. 4407, 67th Leg., Reg. Sess. (Wash. 2022) (enacted). Upon passage, the Legislature's amended redistricting plan became State law. Wash. Rev. Code § 44.05.100.

E. The *Soto Palmer* and *Garcia* Lawsuits Challenging Legislative District 15

In January 2022, plaintiffs in *Soto Palmer v. Hobbs* filed suit, alleging that LD 15 diluted Hispanic voting strength in violation of Section 2 of the Voting Rights Act. ECF No. 1, *Soto Palmer v. Hobbs*, No. 22-cv-5035-RSL (W.D. Wash. Jan. 19, 2022).[2] The case was assigned to Judge Robert Lasnik of the Western District of Washington.

Nearly two months later, on March 15, 2022, Garcia filed this lawsuit, claiming that LD 15 was a racial gerrymander in violation of the Fourteenth

[2] Filings from the *Garcia v. Hobbs* district court docket will be short cited as *Garcia*, ECF No. __. Filings from the *Soto Palmer* district court docket will be short cited as *Soto Palmer*, ECF No. __.

Amendment. ECF No. 1, *Garcia v. Hobbs*, No. 3:22-cv-05152-RSL-DGE-LJCV (W.D. Wash. Mar. 15, 2022) (2-ER-107–27). That case was assigned to a panel of Judge Lasnik and Chief Judge Estudillo of the Western District of Washington, and Judge VanDyke of the Ninth Circuit.

Two weeks after *Garcia* was filed, three individuals—represented by the same counsel as Garcia—moved to intervene in *Soto Palmer* to defend LD 15 against the *Soto Palmer* Plaintiffs' Section 2 claims. *Soto Palmer*, ECF No. 57. On May 6, the *Soto Palmer* District Court granted permissive intervention to Intervenor–Defendants, *Soto Palmer*, ECF No. 69, and ordered the State of Washington joined as a party "to ensure that the Court has the power to provide the relief plaintiffs request." *Soto Palmer*, ECF No. 68 at 5.

The two cases then proceeded with: (1) the *Soto Palmer* Plaintiffs challenging LD 15 under Section 2; (2) the *Soto Palmer* Intervenors arguing that LD 15 complied with Section 2; (3) the *Garcia* Plaintiff challenging LD 15 under the Fourteenth Amendment; and (4) the State of Washington defending LD 15.[3] But because *Soto Palmer* was filed first, the cases proceeded on a staggered schedule, with *Soto Palmer* generally going first. Following dueling motions by the two sets of plaintiffs aimed at streamlining the cases, Judge Lasnik found "that judicial efficiency [would] best be served by hearing the Section 2 and the equal protection claims together,"

[3] The Secretary of State has not taken a position on the merits of either case.

and thus continued the *Soto Palmer* trial to coincide with the *Garcia* trial. *Soto Palmer*, ECF No. 136 at 5. However, to preserve the priority of *Soto Palmer*, Judge Lasnik explained that "[a]t 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." *Id.* at 5. Ultimately, the two cases were heard together in a joint trial, with the first day consisting of *Soto Palmer*-only evidence, heard by Judge Lasnik, and the remaining days consisting of joint evidence for both *Soto Palmer* and *Garcia* heard by the three-judge panel (which included Judge Lasnik). *Soto Palmer*, ECF Nos. 187, 198–201 (minute entries); *Garcia*, ECF Nos. 68–70 (minute entries) (SER-42–47).

F. The *Soto Palmer* District Court Determines Legislative District 15 Violates Section 2, and the *Garcia* District Court Dismisses the Racial Gerrymandering Case as Moot

On August 10, 2023, Judge Lasnik issued a Memorandum of Decision in *Soto Palmer v. Hobbs*, finding that LD 15 had the effect of discriminating against Hispanic voters by denying them the equal right to elect candidates of their choice. Following the Supreme Court's reaffirmance of the *Gingles* framework in *Allen v. Milligan*, 599 U.S. 1 (2023), Judge Lasnik analyzed the *Gingles* factors and concluded that the *Soto Palmer* plaintiffs had satisfied them all. *Soto Palmer v. Hobbs*, 686 F. Supp. 3d 1213, 1224–27 (W.D. Wash. 2023). The court then undertook the totality of the circumstances analysis, finding that seven of the nine

Senate Factors supported "the conclusion that the bare majority of Latino voters in LD 15 fails to afford them equal opportunity to elect their preferred candidates." *Id.* at 1234.

In its ruling enjoining the enacted plan, the *Soto Palmer* district court provided the Legislature (and any reconvened Commission) approximately five months to complete the remedial process. *Id.* at 1236. But once it became clear that the Legislature was unlikely to reconvene the Commission, the district court ordered the parties to begin a remedial process in parallel with the Legislature. This was prescient: the Legislature never reconvened the Commission. On March 15, the district court ordered a new map, with a redrawn, newly labeled LD 14. In a detailed order, the court explained that the remedy it adopted was necessary to remedy the VRA violation it previously found. *Palmer v. Hobbs*, No. 3:22-cv-05035-RSL, 2024 WL 1138939, at *1–2 (W.D. Wash. Mar. 15, 2024). The court acknowledged that "the Latino citizen voting age population of LD 14 in the adopted map is less than that of the enacted district," but explained that "the new configuration provides Latino voters with an equal opportunity to elect candidates of their choice to the state legislature, especially with the shift into an even-numbered district, which ensures that state Senate elections will fall on a presidential year when Latino voter turnout is generally higher." *Id.* at *2. Intervenors in *Soto Palmer* have appealed the district court's liability judgment and remedial order, and those appeals are set to be heard

by the same merits panel as this one. DktEntry: 76, *Soto Palmer v. Hobbs*, No. 23-35595 (9th Cir. June 25, 2024).

One month after the *Soto Palmer*'s decision on liability, the *Garcia* court issued its opinion, dismissing this case as moot. 1-ER-4–12. As the majority explained, Garcia sought declaratory relief that LD 15, as enacted, was unlawful, "an injunction 'enjoining [Washington] from enforcing or giving any effect to the boundaries of [] [LD 15],'" and an order requiring "a new legislative map be drawn." 1-ER-5–6 (quoting Garcia's Amended Complaint). But Judge Lasnik's decision invalidating LD 15 and ordering a new, VRA-compliant map meant "the Court cannot provide any more relief to Plaintiff." 1-ER-6; *see also* 1-ER-9 ("LD 15 will be redrawn and will not be used in its current form for any future election. The *Soto Palmer* court has therefore granted Plaintiff complete relief for purposes of our mootness analysis."). And the court further explained that "Plaintiff does not assert that any new district drawn by the Washington State Redistricting Commission . . . would be a 'mere continuation[] of the old, gerrymandered district[].'" 1-ER-6 (quoting *North Carolina v. Covington*, 138 S. Ct. 2548, 2553 (2018)). The court therefore dismissed Plaintiffs' claims under Article III without addressing the merits or ruling on Garcia's requested injunction. 1-ER-5–12. Judge VanDyke dissented, disagreeing with the majority's mootness conclusion. 1-ER-13–50.

Garcia next appealed to the Supreme Court, presenting two issues: whether the Supreme Court had appellate jurisdiction and whether the three-judge district court erred in finding the case moot. *See* Jurisdictional Statement, *Garcia v. Hobbs*, No. 23-467 (U.S. Oct. 31, 2023). Presumably because the Supreme Court lacked appellate jurisdiction, it vacated the district court's judgment and instructed the district court to enter a fresh judgment so that Garcia could timely appeal to this Court. *Garcia v. Hobbs*, 144 S. Ct. 994, 995 (2024). The district court entered an amended judgment, and Garcia's appeal now follows. 1-ER-2; 2-ER-153–54.

IV. SUMMARY OF ARGUMENT

This Court should affirm the judgment of the three-judge district court, which dismissed Garcia's Equal Protection challenge to LD 15 as moot. LD 15 no longer exists, following the *Soto Palmer* decision invalidating it under the Voting Rights Act, so no further relief can be given to Garcia. He sought a declaration that LD 15 was an illegal racial gerrymander, but that declaration would be superfluous—a pure advisory opinion—because a court has already invalidated LD 15. He also sought an injunction enjoining the State from giving effect to LD 15 and requiring the creation of a new plan that does not violate the Equal Protection Clause. The *Soto Palmer* court did just that in striking down LD 15 and adopting a new map that remedies the Voting Rights Act violation.

The *Garcia* district court's dismissal of the constitutional claim as moot is consistent with bedrock principles of judicial restraint. The Supreme Court has long admonished "that courts [should] avoid reaching constitutional questions in advance of the necessity of deciding them." *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988). In line with this principle, the *Soto Palmer* Section 2 liability judgment obviated the need for the *Garcia* district court to reach the Equal Protection claim.

But should the Court disagree on mootness, it should remand the case to the three-judge district court to make findings on Garcia's claim in the first instance. Remand is appropriate because 28 U.S.C. § 2284 directs three-judge district courts to decide constitutional challenges to redistricting; racial gerrymandering claims are highly fact-intensive, sensitive inquiries that district courts are better suited to make; and the district court has had the benefit of a full record, which encompasses extensive trial testimony, deposition designations admitted as evidence, and hundreds of admitted exhibits.

The Court should affirm the dismissal of the case as moot, or in the alternative, remand to the district court.

V. STANDARD OF REVIEW

This Court "review[s] de novo the question whether a case is moot." *Foster v. Carson*, 347 F.3d 742, 745 (9th Cir. 2003).

VI. ARGUMENT

A. The District Court Correctly Dismissed this Case as Moot

The district court correctly dismissed Garcia's suit as moot once the district he challenged was invalidated. "A case becomes moot—and therefore no longer a 'Case' or 'Controversy' for purposes of Article III—'when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome.'" *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (quoting *Murphy v. Hunt*, 455 U.S. 478, 481 (1982) (per curiam)). "[F]ederal courts have no jurisdiction to hear a case that is moot[.]" *Cook Inlet Treaty Tribes v. Shalala*, 166 F.3d 986, 989 (9th Cir. 1999).

"Throughout the litigation, the party seeking relief must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *United States v. Juvenile Male*, 564 U.S. 932, 936 (2011) (cleaned up); *Alvarez v. Smith*, 558 U.S. 87, 92 (2009) (explaining that a plaintiff must retain a personal stake "at all stages of review, not merely at the time the complaint is filed[]") (citation omitted). Thus, if an intervening circumstance during the litigation addresses the plaintiff's alleged injury and deprives him of a personal stake in the lawsuit's outcome, the case is moot. *Moore v. Harper*, 600 U.S. 1, 14 (2023).

Garcia's request for invalidation of LD 15 and an injunction to redraw the map is now moot because the earlier-decided *Soto Palmer* case already did just that: it invalidated LD 15 and ordered a new map be drawn. *See, e.g.*, *Growe v. Emison*, 507 U.S. 25, 39 (1993) (explaining that after a state court declared a redistricting plan to be unconstitutional, a separate federal suit "claim[ing] that the . . . plan violated the Voting Rights Act became moot, unless those claims also related to the superseding plan[]"); *Thomas v. Reeves*, 961 F.3d 800, 801 (5th Cir. 2020) (en banc) (holding that a VRA challenge "has become moot" because "the current district lines will neither be used nor operate as a base for any future election[]"). Below, Garcia asked the three-judge district court to enjoin the State defendants from "enforcing or giving any effect to the boundaries of [LD] 15[,]" including conducting "any further elections for the Legislature based on [LD] 15," and also "[o]rder the creation of a new valid plan . . . that does not violate the Equal Protection Clause." 2-ER-105. But the *Soto Palmer* district court earlier determined that LD 15 violated Section 2's prohibition against vote dilution and ordered that the district be redrawn. *Soto Palmer v. Hobbs*, 686 F. Supp. 3d 1213 (W.D. Wash. 2023). This means the boundaries of the enacted LD 15 will not be given effect. Thus, "[t]his is a classic case in which, due to intervening events, there is no longer a live controversy necessary for Article III jurisdiction." *Brach v. Newsom*, 38 F.4th 6, 11 (9th Cir. 2022) (en banc), *cert. denied*, 143 S. Ct. 854 (2023) (dismissing as moot appeal of

since-revoked executive order); *Diffenderfer v. Cent. Baptist Church of Mia., Fla., Inc.*, 404 U.S. 412, 414–15 (1972) (case was moot and declaratory relief and injunction "inappropriate" where law was no longer in effect); *Already*, 568 U.S. at 91 ("No matter how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit, the case is moot if the dispute 'is no longer embedded in any actual controversy about the plaintiffs' particular legal rights.'" (quoting *Alvarez v. Smith*, 558 U.S. 87, 93 (2009))).

To be sure, as Garcia correctly notes, Opening Br. at 18, if this Court were to reverse the liability ruling in *Soto Palmer*, so that the originally enacted LD 15 came back into effect, then Garcia's claim would present a live controversy. But that is simply a reason for this Court to hold this case in abeyance and decide *Soto Palmer* first; it does not mean that Garcia's challenge is live now, as is required to avoid mootness, as further detailed below. If this Court reverses the *Soto Palmer* district court's liability judgment, the State agrees that this case should be remanded for a determination on the merits. If, however, this Court affirms the *Soto Palmer* court's liability judgment, then there is no plausible argument that this case presents a live controversy, and this Court should affirm the district court's dismissal of this case as moot.

It is also of course true, as Garcia points out, that LD 15 was not invalidated for the reason he requested, but that is irrelevant to the mootness inquiry. Given the

absence of a live controversy, any request for declaratory relief that LD 15 should have been invalidated for a *different* reason would be an advisory opinion about a nonexistent legislative map, which Article III forbids. *See Carney v. Adams*, 141 S. Ct. 493, 498 (2020) (a case must "embody a genuine, live dispute between adverse parties, thereby preventing the federal courts from issuing advisory opinions"). The court below thus could not provide any further relief to Garcia.

Based on intervening circumstances, the Supreme Court reached a similar mootness conclusion in *New York State Rifle & Pistol Association, Inc. v. City of New York, New York*, 140 S. Ct. 1525 (2020) (per curiam). There, petitioners challenged a New York City rule regarding the transport of firearms. *Id.* at 1526. After the Supreme Court granted certiorari, the City amended its rule to allow petitioners to transport firearms to second homes and to shooting ranges outside of the city—mooting petitioners' claims for declaratory and injunctive relief. *Id.* The Supreme Court vacated the judgment below because the city's amendment granted "the precise relief that petitioners requested in the prayer for relief in their complaint." *Id.* So too here. Based on the *Soto Palmer* order enjoining use of the current LD 15 boundaries, Garcia received the relief he requested in the prayer for relief in his complaint.

Bottom line: unless this Court reverses the *Soto Palmer* liability order, "there is no longer any" enacted LD 15 "for the court to declare unconstitutional or to enjoin. It could not be clearer that this case is moot." *Brach*, 38 F.4th at 11.

Despite the foundational principle that a case becomes moot when the thing being challenged is no longer in effect, Garcia raises a handful of arguments he claims support this Court putting the law aside and reviving his claim untethered from the district he actually challenged. None of his arguments have merit.

His primary argument is that this case is not moot because he is supposedly still experiencing the same type of injury that spurred his original suit. *See, e.g.*, Opening Br. at 23–31. For the reasons outlined in the State's brief in *Soto Palmer*, this claim is simply wrong on the merits: there is no reason to believe the remedial district ordered by the *Soto Palmer* district court is an unconstitutional racial gerrymander. *See* State's Answering Br. at 52–62, *Soto Palmer v. Hobbs*, DktEntry: 98, No. 23-35595 (9th Cir. Aug. 30, 2024). But even leaving that aside, Garcia's dissatisfaction with the remedy ordered in *Soto Palmer* doesn't somehow save his own, separate suit from mootness.

A plaintiff contending they were racially sorted "must prove that race was the predominant factor motivating the . . . decision to place a significant number of voters within or without a particular district." *See Cooper v. Harris*, 581 U.S. 285, 291 (2017). The claim—and the injury—thus turns on what was going on in the

mind of the decisionmaker. But here, there were two separate decisionmakers. The Commission proposed and the Legislature adopted the district Garcia challenged, but a different decisionmaker—Judge Lasnik—adopted the current remedial LD 14. As the three-judge district court correctly explained, then, Garcia's suit against the old, invalidated district cannot be transubstantiated into a suit against "new legislative districts in the Yakima Valley," because "the propriety of the new districts will be decided by analyzing the motivations and decisions of new individuals[.]" 1-ER-6.

Cases cited by Garcia illustrate this point. For example, in *Callais v. Landry*, plaintiffs brought an Equal Protection challenge to a remedial congressional map enacted by a state Legislature *after* a separate, successful Section 2 challenge. *See Callais v. Landry*, No. 3:24-cv-00122 DCJ-CES-RRS, 2024 WL 1903930, at *1 (W.D. La. Apr. 30, 2024). The three-judge court looked at circumstantial and direct evidence of the Legislature's motive in creating the remedial congressional district. *See id.* at *14–17.

Another way to think about this is that the district court's independent decision to adopt a different map breaks the chain of causation in Garcia's suit. To have a "Case" or "Controversy" within the meaning of Article III, Garcia must show "a causal connection between the injury and the conduct complained of[.]" *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). In other words, he must show a

connection between the injury he now alleges and the claim he brought. *See Murthy v. Missouri*, 144 S. Ct. 1972, 1988 (2024). But here, any injury Garcia now asserts (though never alleged below) stems not from the action he challenged in this lawsuit—the Commission's creation and the Legislature's adoption of enacted LD 15—but from an entirely different action—Judge Lasnik's adoption of remedial LD 14. This lack of causation renders Garcia's current claim moot.

A third way to understand the flaw in Garcia's contention is simply to play out the scenarios. If this Court affirms both the liability and remedial orders from the *Soto Palmer* court, then what is Garcia challenging? If this Court upholds the current boundaries of LD 14, what could the district court possibly do with his claim? If, on the other hand, this Court affirms the *Soto Palmer* liability judgment, but rejects the remedial order, then that puts us right back where the district court was when it initially held Garcia's suit was moot. Garcia would be challenging a district that no longer exists. And Garcia would again be unable to identify any injury giving him a continuing stake in his claim because redrawing a legislative district to comply with the VRA does not violate the Equal Protection Clause. *See Allen*, 599 U.S. at 41 ("[F]or the last four decades, this Court and the lower federal courts . . . have authorized race-based redistricting as a remedy for state districting maps that violate § 2."); *Abbott v. Perez*, 585 U.S. 579, 587 (2018) ("Since . . . the VRA demands consideration of race . . . compliance with the VRA may justify the

consideration of race in a way that would not otherwise be allowed.); *see also* 2-ER-108 (Garcia asserting compliance with Section 2 "is a compelling state interest[]").[4] Finally, if this Court reverses the *Soto Palmer* court's liability judgment, then Garcia's claim will no longer be moot, and back to district court we will go. But as things currently stand, there is simply no space for Garcia to maintain this separate, moot claim as a collateral attack on the *Soto Palmer* court's orders.

Garcia's remaining arguments fare no better. He contends this case is not moot because a court can grant effectual relief through "an injunction requiring LD-15 to be redrawn without any consideration of race[.]" Opening Br. at 4. But this is not the injunctive relief he actually requested in his complaint. Instead, Garcia asked that a new plan be created "that does not violate the Equal Protection Clause." 2-ER-105. Again, he cannot pursue a different claim on appeal than the one he brought in the trial court.

And, in any event, in a world in which LD 15 has been struck down under § 2, his newly framed relief is contrary to the law: "redistricting legislatures will almost always be aware of racial demographics," *Allen*, 599 U.S. at 30 (cleaned up), and

[4] Garcia's challenge would also necessarily fail on the merits, then, because if this Court affirms the *Soto Palmer* district court's holding that enacted LD 15 violated Section 2 of the VRA, then it follows ineluctably that the Commission and Legislature "had 'a strong basis in evidence' for concluding that the [VRA] required" "race-based districting." *Cooper*, 581 U.S. at 292-93 (quoting *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 278 (2015)).

the Voting Rights Act and precedent permits or requires racial consciousness in redistricting. *See id.* at 41; *Abbott*, 585 U.S. at 587.

Garcia also inaptly relies on *North Carolina v. Covington* to argue that his request for injunctive relief remains live because he supposedly "remain[s] segregated on the basis of race." Opening Br. at 23 (quoting *North Carolina v. Covington*, 585 U.S. 969, 976 (2018)). *Covington* presents a starkly different scenario than here. In *Covington*, voters alleged the North Carolina general assembly had gerrymandered their districts, the general assembly then redrew maps, and voters again objected to those remedial maps, alleging that they perpetuated the unconstitutional aspects of the original plan. 585 U.S. at 974–75. Here, by contrast, the remedial district is not a "mere continuation[] of the old, gerrymandered district[]." *Id.* at 976. It is a fundamentally different district, selected by a different decisionmaker. Unlike in *Covington*, the evidence that would be needed to show that race predominated in the minds of the Commission and Legislature is entirely distinct from the evidence that would be needed to show that race predominated in Judge Lasnik's mind. *Covington*, moreover, involved a single suit; plaintiffs brought a challenge, the General Assembly tried to address it, and when they allegedly failed, plaintiffs were able to maintain their challenge. *Covington* offers no support for Garcia's attempt to maintain his suit as a collateral challenge to a *separate* lawsuit.

Garcia's reliance on *Northeast Florida Chapter of Associated General Contractors of America v. City of Jacksonville*, 508 U.S. 656 (1993), Opening Br. at 24, fails for essentially the same reason. In that case, the Supreme Court was applying the voluntary cessation doctrine, in which "'a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.'" 508 U.S. at 662 (quoting *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982)). Garcia does not argue the voluntary cessation doctrine applies, nor could he, since the remedial district was not adopted voluntarily, but pursuant to court order.

Garcia's mistaken analogy to the Takings Clause does not save this case from mootness either. *See* Opening Br. at 26. Under the Takings Clause, "a property owner acquires an irrevocable right to just compensation immediately upon a taking because of the self-executing character of the Takings Clause with respect to compensation." *DeVillier v. Texas*, 601 U.S. 285, 291 (2024). So a claim for retrospective damages for a completed takings violation (whether a dollar or more) is not mooted—even if prospective relief is no longer available. *See, e.g.*, *El Papel, LLC v. City of Seattle*, No. 22-35656, 2023 WL 7040314, at *1 (9th Cir. Oct. 26, 2023) (unpublished), *cert. denied*, 144 S. Ct. 827 (2024) (takings claim seeking nominal damages not moot because there was effectual relief if plaintiffs were to prevail on the merits); *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 802

(2021) ("[F]or the purpose of Article III standing, nominal damages provide the necessary redress for a completed violation of a legal right."). By contrast, here, Garcia's Equal Protection challenge sought *only* prospective declaratory and injunctive relief—not retrospective damages—so no effectual relief can be given to him.[5] *See* 2-ER-105.

Garcia makes a convoluted argument that the district court should have presumed he could succeed on the merits of his claim in assessing mootness, and that the district court somehow erred in adopting the merits determinations of the *Soto Palmer* court. Opening Br. at 33–34. Garcia simply misunderstands the district court's ruling. The district court did not find Garcia's case moot because it agreed with the *Soto Palmer* court on the merits, but because that case invalidated the district Garcia challenged. Once that district was invalidated, for whatever reason, any separate challenge seeking to invalidate it was moot.

Garcia next argues that his case is not moot because if the decision in *Soto Palmer* is reversed on appeal, "the originally enacted LD-15 . . . would once again take effect[.]" Opening Br. at 35. But that argument misunderstands this Court's mootness doctrine. A plaintiff must demonstrate, throughout the pendency of his case, that he is suffering an actual injury that will be redressed by a favorable

[5] Even if Garcia had sought damages, they would be unavailable against the State and its officials acting in their official capacities. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989).

decision *in his case*. *See, e.g.*, *Wittman v. Personhuballah*, 578 U.S. 539, 543 (2016) (plaintiff must show all three elements of standing "throughout the life of the lawsuit[]") (citing *Arizonans for Official English*, 520 U.S. at 67). "If an intervening circumstance deprives the plaintiff of a personal stake in the outcome of the lawsuit, *at any point during litigation*, the action can no longer proceed and must be dismissed as moot." *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 72 (2013) (quoting *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477–78 (1990)). The possibility that the outcome of a different case will injure a plaintiff in the future is far too speculative to demonstrate existing harm: "'threatened injury must be *certainly impending* to constitute injury in fact[]'"—"'allegations of possible future injury' are not sufficient." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)). Thus, it is untenable to base standing on the possibility that a different case might be reversed. *Cf. Juvenile Male*, 564 U.S. at 937 ("[O]ne can never be certain that findings made in a decision concluding one lawsuit will not some day . . . control the outcome of another suit. But if that were enough to avoid mootness, no case would ever be moot." (quoting *Commodity Futures Trading Comm'n v. Board of Trade of Chicago*, 701 F.2d 653, 656 (7th Cir. 1983) (Posner, J.))).

To support his novel theory, Garcia claims support from *Moore v. Harper*, 600 U.S. 1 (2023), Opening Br. at 36, but that case differed dramatically from this

one. There, the petitioners were asking for reinstatement of North Carolina's legislatively enacted 2021 districting plan, which had been invalidated by North Carolina state courts on state law grounds. *Moore*, 600 U.S. at 12. The petitioners argued that the federal Elections Clause prohibited the North Carolina courts from reviewing and altering the plan enacted by the legislature. *Id.* After the Supreme Court granted review on that issue, the North Carolina courts reversed course and held that state courts would not review claims of partisan gerrymandering under the state constitution. But the North Carolina courts did not reinstate the 2021 legislatively enacted map. *Id.* at 13. The Supreme Court therefore concluded that the North Carolina courts' change of heart did not moot the case, because the petitioners could still obtain the relief they sought—reinstatement of the 2021 maps—by prevailing in the Supreme Court. Indeed, the petitioners' only "path to complete relief" (the use of the 2021 maps) "runs through this Court," and the petitioners therefore retained a "personal stake" in the case. *Id.* at 15.

Moore's posture is profoundly different from the case here. In *Moore*, the only way the petitioners could obtain the relief they wanted was if the Supreme Court heard the case and ruled in their favor. *Id.* at 15. Here, by contrast, Garcia has already obtained the relief he originally requested: the district he challenged will not be used in future elections. His claim is that he may lose that relief and need it again if the decision in another case (*Soto Palmer*) is reversed. But that is not enough for Garcia

to retain a "'personal stake' in th[is] litigation." *Id.* at 14 (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)). *Moore* is inapplicable.

Garcia's efforts to claim support from *Hunt v. Cromartie*, 526 U.S. 541 (1999), and *Thomas v. Bryant*, 938 F.3d 135 (5th Cir. 2019), Opening Br. at 37, are equally ill-fated. Those cases merely stand for the proposition that "a legislature's responsive fix to an election statute [does not] moot[] [defendant's] appeal of the district court ruling that triggered the fix[,]" particularly where the legislature makes clear it will revert to the challenged map if successful on appeal. *Thomas*, 938 F.3d at 144; *see also Cromartie*, 526 U.S. at 545 n.1 ("Because the State's 1998 law provides that the State will revert to the 1997 districting plan upon a favorable decision of this Court . . . this case is not moot[.]"). In other words, these cases merely reflect the common-sense proposition that a state's implementation of an interim fix under protest does not foreclose the state's ability to challenge an adverse liability judgment on appeal. These cases don't lend any support to Garcia's attempt to keep his separate suit alive.

Moreover, Garcia neglects to mention that the *Thomas* panel opinion he relies on was vacated and reversed by the *en banc* court once it became clear that the challenged "district lines will neither be used nor operate as a base for any future election." *Thomas*, 961 F.3d at 801. At that point, "[t]he en banc court unanimously agree[d] that [it] no longer ha[d] jurisdiction in this case because it has become

moot." As in *Thomas*, so too here: because the district Garcia challenged will not (and, pursuant to court order, cannot) be used for another election, his claim is moot.

Garcia also cites several circuit cases for the proposition that a case is not moot until a claim in another forum is finally resolved, but none of those cases actually include that holding. *See* Opening Br. at 39–40.

For example, in *Enrico's, Inc. v. Rice*, 730 F.2d 1250 (9th Cir. 1984), this Court determined that a state court of appeals decision, which California's supreme court had declined to review, had rendered moot the equitable relief claims in the federal case. *Id.* at 1253–54. Although one party argued that a second, then–pending state court of appeals case might deliver a contrary decision adverse to that party, the Ninth Circuit thought it "improbable" such a result would occur and concluded the case was moot. *Id.* at 1254. The *Rice* court explained it could not grant effective relief and thus lacked jurisdiction. *Id.*

Similarly, *Moore v. Louisiana Board of Elementary & Secondary Education*, 743 F.3d 959 (5th Cir. 2014), involved state court and federal court challenges to the same Louisiana law. Days after a federal district court issued a preliminary injunction against the law on federal grounds, a Louisiana trial court invalidated the same law on state law grounds, a decision that was soon affirmed by the Louisiana Supreme Court. *Id.* at 962. The Eleventh Circuit then unsurprisingly concluded that the federal case was moot, because the law the plaintiffs sought to enjoin had already

been enjoined on state law grounds in the state case *Id.* at 963. The Court never said or implied anything about whether the plaintiffs' claim became moot after the state trial court decision or only after the decision was affirmed on appeal.

In short, none of the cases cited by Garcia held that a separate decision invalidating a challenged law must become final in order to moot another challenge to the same law. While Garcia is correct that this Court's decision in *Soto Palmer* could resuscitate his claim, that at best counsels in favor of holding his appeal in abeyance. It doesn't mean this Court should ignore bedrock Article III principles and claim jurisdiction over his moot claim.

B. The District Court Correctly Applied the Canon of Constitutional Avoidance in Declining to Rule on Garcia's Constitutional Challenge

One of the core themes of Garcia's opening brief is that the district court used disreputable "docket management" to "abdicate[] its Article III duty to issue a merits decision in Mr. Garcia's case." Opening Br. at 1. Like the *Soto Palmer* Intervenors' unfounded collusion argument, this argument is as wrong as it is irrelevant. Because mootness, like standing, is jurisdictional, an appellant can't overcome it with baseless allegations of bad faith.

Moreover, Garcia's argument is nonsense. As a practical matter, *Soto Palmer* was filed months before *Garcia*, the cases initially proceeded on a staggered schedule reflecting that difference, and in consolidating the cases for trial, the *Soto Palmer* district court preserved the priority of *Soto Palmer*. *See supra* pp. 13–14.

And as a prudential matter, one of the most "fundamental and longstanding principle[s] of judicial restraint" is that courts should "avoid reaching constitutional questions in advance of the necessity of deciding them." *Lyng*, 485 U.S. at 445. The Supreme Court has thus repeatedly held that it normally "will not decide a constitutional question if there is some other ground upon which to dispose of the case[.]" *Northwest Austin Mun. Utility Dist. No. One v. Holder*, 557 U.S. 193, 205 (2009) (quoting *Escambia County v. McMillan*, 466 U.S. 48, 51 (1984)); *see also Rosado v. Wyman*, 397 U.S. 397, 402 (1970) (explaining that a three-judge district court "would have been obliged to adjudicate [the] statutory claim in preference to deciding the original constitutional claim" and that the Supreme Court "decide[s] the statutory question in order to avoid a constitutional ruling").

Applying the constitutional avoidance doctrine, courts routinely address VRA claims without reaching constitutional claims in redistricting cases. In *League of United Latin American Citizens v. Perry*, for example, the Supreme Court invalidated one of Texas's congressional districts based on Section 2, and therefore declined to address appellants' constitutional claims. 548 U.S. 399, 442 (2006); *see also Thornburg v. Gingles*, 478 U.S. 30, 38 (1986) (noting that the district court held North Carolina's legislative redistricting plan violated Section 2, and thus did not reach the challengers' 14th and 15th Amendment claims); *Singleton v. Merrill*, 582 F. Supp. 3d 924, 1035 (N.D. Ala. 2022), and *Caster v. Merrill*, 2:21-cv-1536-AMM,

2022 WL 264819, at *84 (N.D. Ala. Jan. 24, 2022), *aff'd sub nom. Allen*, 599 U.S. 1 (issuing a preliminary injunction on statutory grounds, and because Alabama's congressional elections would thus not occur based on a map that was allegedly unconstitutional, declining "to decide the constitutional claims asserted"). In short, by declining to reach Garcia's constitutional claim—particularly once that claim had become moot—the three-judge district court did not engage in shenanigans. It did exactly what it should have done.

C. In the Event this Court Determines Garcia's Suit Is Not Moot, Remand Is the Correct Remedy

Garcia argues that if this Court determines his claim is not moot, this Court should conduct an analysis of his constitutional claim in the first instance. Opening Br. at 42. This is preposterous: it contravenes federal law, elides the roles of trial and reviewing courts, and asks the Court to make findings without a full review of the trial testimony and admitted exhibits.

First, 28 U.S.C. § 2284 directs the three-judge district court to "determine[] "the constitutionality of . . . the apportionment of any statewide legislative body." If this case is not moot, remanding it gives effect to 28 U.S.C. § 2284, allowing the three-judge district court to determine whether LD 15 is constitutional.

Second, courts of appeals don't do complex fact-finding on constitutional issues in the first instance. This is because "[t]he district court, as the trier of fact in this matter, [is] in a superior position to appraise and weigh the evidence[]" and to

make "determination[s] regarding the credibility of witnesses[.]" *Husain v. Olympic Airways*, 316 F.3d 829, 840 (9th Cir. 2002), *aff'd*, 540 U.S. 644 (2004); *see also United States v. Woodson*, 962 F.2d 16 (9th Cir. 1992) ("[T]he district court . . . is in a superior position to evaluate and weigh the evidence.") (quotation omitted). This is particularly so in racial gerrymandering cases, which turn peculiarly on what was happening inside people's heads while they drew lines, and thus heavily implicate the district court's ability to weigh the credibility of witnesses. *See, e.g.*, *Miller v. Johnson*, 515 U.S. 900, 915–16 (1995) ("The courts, in assessing . . . a challenge to a districting plan, must be sensitive to the complex interplay of forces that enter a legislature's redistricting calculus[]" and tease out "difficult . . . evidentiary" distinctions "between being aware of racial considerations and being motivated by them"); *Alexander v. S.C. State Conference of the NAACP*, 144 S. Ct. 1221, 1241 (2024) ("[I]n a case like this, we must exercise special care in reviewing the relevant findings of fact."); *Cromartie*, 526 U.S. at 549 ("The legislature's motivation is itself a factual question."). Thus, if this Court determines Garcia's claim is not moot, "[t]he District Court is best positioned to determine in the first instance the extent to which . . . race directed the shape of th[e] . . . district[]. And if race did predominate, it is proper for the district court to determine in the first instance whether strict scrutiny is satisfied." *Bethune-Hill v.*

Virginia State Bd. Of Elections, 580 U.S. 178, 192–93 (2017) (rejecting invitation for reviewing court to find race predominated in challenged districts).

The Supreme Court has made clear the distinct roles for the trial court and the reviewing court in racial gerrymandering challenges. As described above, "[a] trial court has a formidable task: It must make 'a sensitive inquiry' into all 'circumstantial and direct evidence of intent' to assess whether the plaintiffs have managed to disentangle race from politics and prove that the former drove a district's lines." *Cooper*, 581 U.S. at 308. An appellate court, however, has the "generally easier" job to "review a district court's finding as to racial predominance only for clear error, except when the court made a legal mistake." *Id.* at 309. This means, on appeal, the reviewing court must give a district court's view of events "significant deference," and must uphold those findings so long as they are "plausible." *Id.* at 293. But again, Garcia would have this Court short-circuit that process and turn itself into a trial court with the "first view" and not as "a court of review[.]" *Cutter v. Wilkinson*, 544 U.S. 709, 718, n.7 (2005). The Court should decline that invitation.

Garcia tries to avoid the obvious by claiming the district court already "engag[ed] in extensive factual analysis to rebut" Garcia's allegations. Opening Br. at 19. But the "extensive" analysis he points to is a one-paragraph footnote briefly responding to the dissent's recitation of the facts. Opening Br. at 44 (citing 1-ER-8 n.4). That footnote merely highlights one area of "disagree[ment] with the dissent's

summary and interpretation of the facts surrounding the creation of LD 15." 1-ER-7. It was not the searching, "'sensitive inquiry'" the "trial court [must] perform" to engage in the "inherently complex endeavor" of "assessing a jurisdiction's motivation." *Cromartie*, 526 U.S. at 546 (quoting *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977)). At this point, there are no factual findings for this Court to review regarding what role race played in the drawing of enacted (and since-invalidated LD 15), what role other factors (like partisanship) played, whether the Legislature's adoption of LD 15 supports the finding that racial considerations did not predominate, whether the district complied with traditional redistricting criteria, whether the Commission had a strong basis in evidence to draw a race-conscious district, or any of the many other issues a court would need to carefully consider in determining whether LD 15 was a racial gerrymander.

Third, it would be particularly inappropriate for this Court to make factual findings on the truncated appellate record prepared here by the parties. *See, e.g.*, 2-ER-56–87 (Garcia's excerpts containing 31 pages of trial transcripts). The *Garcia* district court heard live testimony from the four voting Commissioners, several staffers who worked for the Commissioners, experts, and community members, received deposition designations as evidence from fifteen witnesses, and admitted over 500 exhibits. *See* SER-4–47. The district court is firmly in the best position to

weigh that evidence to make findings on whether race predominated in the adoption of LD 15.

Fourth, Garcia's truncated description of the facts here is laughably one-sided, drawn almost entirely from the panel's dissenting judge's opinion rather than the actual record. Any fair review of the full record before the district court would compel the conclusion that race did not predominate in the Legislature's decision to adopt LD 15 or in the Commission's drawing of LD 15. For one, the Legislature—not the Commission—adopted LD 15 challenged by Garcia, and there is no evidence whatsoever about the Legislature's thinking in doing so. *See Lee v. City of Los Angeles*, 908 F.3d 1175, 1184 (9th Cir. 2018) (racial considerations did not necessarily predominate in redistricting process despite the predominance of these considerations for the City Council President and a single Commissioner because these two individuals "were only two people in a process that incorporated multiple layers of decisions and alterations from the entire Commission, as well as the City Council[]"). The full record would further support the finding that while the Commissioners were aware of racial demographics in LD 15 and were concerned about complying with the Voting Rights Act, the map hewed closely to traditional redistricting principles and partisan metrics—concerns that do not implicate the Fourteenth Amendment. *See Miller*, 515 U.S. at 916 ("Where [traditional race-neutral districting principles] or other race-neutral considerations are the basis

for redistricting legislation, and are not subordinated to race, a State can defeat a claim that a district has been gerrymandered on racial lines.") (cleaned up). Throughout the redistricting process, the Commissioners applied a range of traditional restricting principles, from maintaining communities of interest to respecting county and city lines to drawing compact districts to preserving tribal sovereignty. *See supra* at pp. 8–10. And negotiations were driven primarily by partisan concerns. *See id.* This is not the rare case where race was the uncompromisable criterion and "race-neutral considerations 'came into play only after the race-based decision had been made.'" *Bethune-Hill*, 580 U.S. at 189 (quoting *Shaw v. Hunt*, 517 U.S. 899, 907 (1996)); *contra* Opening Br. at 45–46 (omitting the second part of *Bethune-Hill*).

Finally, if the Court concludes Garcia's suit is not moot, remand would be appropriate because in the year since the district court dismissed this case, the Supreme Court decided *Alexander v. South Carolina State Conference of the NAACP*, which significantly refined the standard for proving a racial gerrymandering claim. *See Alexander*, 144 S. Ct. at 1235–36 (emphasizing it is difficult for plaintiffs to defeat a court's starting presumption that the legislature—as the redistricting body—acted in good faith); *id.* at 1241 (commanding courts to take care in determining whether partisanship, not race, drove districting decisions). Thus, even if the district court *had* ruled on Garcia's claim, it would be appropriate

to remand this case to give the district court an opportunity to apply *Alexander* (and other racial gerrymandering cases for that matter).

Accordingly, if this Court concludes that Garcia's claim is not moot (or reverses *Soto Palmer* on liability grounds), this case should be remanded to the three-judge district court to rule on Garcia's claim in the first instance.

VII. CONCLUSION

The Court should affirm the district court's dismissal of Garcia's case.

RESPECTFULLY SUBMITTED this 16th day of October 2024.

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