

The Honorable Robert S. Lasnik

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

SUSAN SOTO PALMER, et. al.,

Plaintiffs,

v.

STEVEN HOBBS, et. al.,

Defendants,

and

JOSE TREVINO, ISMAEL CAMPOS,
and ALEX YBARRA,

Intervenor-Defendants.

Case No.: 3:22-cv-05035-RSL

Judge: Robert S. Lasnik

**PLAINTIFFS’ OPPOSITION TO
INTERVENOR-DEFENDANTS’
MOTION TO STAY**

NOTE FOR MOTION

CALENDAR: October 21, 2022

INTRODUCTION

Plaintiffs respectfully submit this response in opposition to Intervenor-Defendants’ (“Intervenors”) motion to stay proceedings in this case pending the U.S. Supreme Court’s disposition of *Merrill v. Milligan*. Almost two months after the U.S. Supreme Court took *Merrill* on the merits, Intervenor, who *voluntarily* joined this case, assured this Court that they were not seeking to delay or disrupt the case schedule. Dkt. # 57 at 2. Yet now, *eight months after* the Supreme Court took *Merrill* on the merits, two months after this Court adjusted the case schedule and set trial for May 1, 2023, Dkt. # 92, and months into discovery, Intervenor seek a stay that would delay this action, waste judicial resources, and harm Plaintiffs.

1 Further, the bases Intervenor cite to support their motion are meritless. Intervenor engage
 2 in ungrounded speculation about what the Supreme Court *might* do in the future and present an
 3 incomplete analysis of the relevant factors for considering a stay. But the law as it stands today is
 4 settled: no controlling authority, including *Thornburg v. Gingles*, 478 U.S. 30 (1986), has been
 5 overruled, and lower courts are bound by existing precedent. *See, e.g., Agostini v. Felton*, 521 U.S.
 6 203, 207 (1993) (“[I]f a precedent of this Court has direct application in a case, yet appears to rest
 7 on reasons rejected in some other line of decisions, the [court] should *follow the case which directly*
 8 *controls*, leaving to this Court the prerogative of overruling its own decisions.”) (emphasis added).
 9 Moreover, Intervenor cannot show any hardship or inequity that would result from the case
 10 proceeding. To avoid undue delay and prejudice to Plaintiffs, preserve judicial resources, and
 11 ensure a proper resolution in this case, Intervenor’s motion to stay should be denied.
 12

13 BACKGROUND

14 On January 19, 2022, Plaintiffs filed their complaint challenging the legislative
 15 redistricting plan drawn by the Washington Redistricting Commission and approved by the
 16 Legislature under Section 2 of the Voting Rights Act. Dkt. # 1. Plaintiffs allege that Legislative
 17 District 15 was drawn to create the façade of a Latino opportunity district that in fact dilutes Latino
 18 voting power in violation of Section 2 of the federal Voting Rights Act (“VRA”). *Id.* at ¶¶ 34, 273-
 19 83. On February 7, 2022, the U.S. Supreme Court granted a stay of a preliminary injunction in
 20 *Merrill v. Milligan* and took the case on the merits.¹ Around two months later, on March 29, 2022,
 21 Intervenor filed a motion to intervene in this case, Dkt. # 57, which Plaintiffs opposed. Dkt. # 64.
 22
 23
 24

25 ¹ *See Merrill v. Milligan*, No. 21-1086,
 26 <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/21-1086.html>

1 On May 6, 2022, the Court allowed Intervenors permissive intervention, but declined to grant
2 intervention as of right because Intervenors lack any significant protectable interest in the suit.
3 Dkt. # 68. The Court also ordered joinder of the State of Washington as a Defendant. Dkt. # 69.

4 On June 14, 2022, the U.S. Supreme Court scheduled the oral argument in *Merrill* for
5 October 4, 2022.² On June 24, 2022, Defendant State of Washington moved to continue the case
6 schedule for 4 to 6 months. Dkt. # 79. Plaintiffs opposed Defendants' motion to continue, *see* Dkt.
7 # 81. Intervenors did not state their position or file a brief with the Court. *See* Dkt. # 79. On August
8 14, 2022, the Court granted Defendant's motion to continue the case schedule, setting new
9 discovery and briefing deadlines and scheduling the trial in the case to begin on May 1, 2023. On
10 October 4, 2022, the oral argument in *Merrill* took place.³ On October 5, 2022, Intervenors filed
11 their motion to stay pending the outcome in *Merrill*. Dkt. # 97.

12 13 14 **LEGAL STANDARD**

15 The Ninth Circuit has an established framework for evaluating a request for a stay in a
16 pending case. Under this framework, courts consider: (1) "the possible damage which may result
17 from the granting of a stay," (2) "the hardship or inequity which a party may suffer in being
18 required to go forward," and (3) "the orderly course of justice measured in terms of the simplifying
19 or complicating of issues, proof, and questions of law which could be expected to result from a
20 stay." *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (quoting *CMAX, Inc. v. Hall*,
21 300 F.2d 265 (9th Cir. 1962)). The burden is on the movant, and "[o]nly in rare circumstances will
22 a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law
23 that will define the rights of both." *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936).
24

25 _____
² *Id.*

26 ³ *Id.*

ARGUMENT**I. Intervenor cannot meet their burden to establish that a stay should be granted.**

Intervenors have not met the “rare circumstances” necessary to justify a stay of this proceeding. 299 U.S. at 255. Staying discovery here would cause significant damage to Plaintiffs, potentially delaying a remedy until the 2026 election and allowing evidence needed to prove their case to go stale. In contrast, there is no concrete hardship to Intervenors arising from the continuation of discovery and litigation of this case. Indeed, the orderly course of justice weighs in favor of denying the stay.

A. Plaintiffs will suffer damage from a stay.

A stay is inappropriate where there is “even a fair possibility that the stay will work damage to some one else.” *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007) (quoting *Landis*, 299 U.S. at 255). Here, the damage to Plaintiffs that will result from granting a stay is more than just a possibility and far outweighs any hardship to Intervenors.

First, halting all action in this case until after the Supreme Court announces a decision in *Merrill* could delay resolution of this matter until after the 2024 elections. This delay would mean that Latino voters in the Yakima Valley region would not obtain relief until the 2026 elections, *more than halfway through the decade*. Every election that continues under an illegal map is one that irreparably harms Plaintiffs, further compounding the harms Latino voters have long suffered in the Yakima Valley region. *See Garza v. Cty. Of Los Angeles*, 918 F.2d 763, 772 (9th Cir. 1990) (finding that Latinos in Los Angeles County suffered an injury of vote dilution that “has been getting progressively worse, because each election has deprived Hispanics of more and more of the power accumulated through increased population”). If the Court grants Intervenors’ stay, the

1 parties would not be able to resume *discovery* until as late as the end of June 2023, let alone
2 dispositive briefing, pretrial briefing, trial, the necessary time for this Court to consider the
3 evidence and issue a decision, a remedial phase, and any possible appeal. To avoid the possibility
4 of remedial maps coming too late and running up against the time limits of *Purcell v. Gonzales*,
5 549 U.S. 1 (2006), *see* Dkt. 66 (order denying Plaintiffs' motion for preliminary injunction in
6 election year on *Purcell* grounds given the deadline of March 28, 2022), Plaintiffs respectfully
7 request that this Court deny Intervenors' motion to stay.
8

9 Further, the delay Intervenors seek may impair the quality of evidence gathered during
10 discovery. In addition to Plaintiffs' results claim, Plaintiffs also have an intent claim under Section
11 2 of the federal Voting Rights Act. Dkt. # 1. During depositions already conducted in this case,
12 less than a year after events in question, some deponents have struggled to recall key details, or
13 even whether they have deleted relevant communications. *See, e.g.*, Ex. 1 (Dep. Excerpts) Campos
14 Dep. at 20:17-20 (forgetting whether he deleted communications regarding 2021 redistricting);
15 62:13-19 (failing to recall timing and the content of his conversations with Commissioner Graves
16 regarding LDs 14 and 15); McLean Dep. at 29:14-21 (not remembering specifics of an analysis
17 conducted by Commission staffer regarding VRA); Davis Dep. at 79:25-80:6 (not recalling if
18 Commissioners were consulted about the use of a particular partisan performance metric).
19 Delaying discovery and trial will only exacerbate the effect of passing time on witnesses'
20 recollection of the 2021 redistricting process, depriving Plaintiffs of a fair opportunity to gather
21 key evidence to support their case.
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1 **B. Intervenor do not identify any concrete hardship that warrants a stay.**

2 Defendants do not meet their burden to “make out a clear case of hardship or inequity.”
3 *Landis*, 299 U.S. 248 at 255. In contrast to the concrete harms Plaintiffs will suffer if this case is
4 stayed, Intervenor identify at best only speculative harms if a stay is not granted.

5 Intervenor bemoan the “grave risk” that Defendants would face in having to litigate this
6 case in the event *Merrill* significantly changes the legal standard under Section 2 case and
7 speculate about hardships that “all parties” “could” face. Dkt. # 97 at 10-12. This is not a serious
8 assertion. Intervenor *voluntarily* inserted themselves into this litigation long *after* the Supreme
9 Court granted certiorari in *Merrill*. Intervenor have been on notice of *Merrill* since the moment
10 that they were granted entry into this suit but waited *eight months* to request a stay.⁴ Defendant
11 State of Washington’s opposition to this motion underscores the absurdity of Intervenor’s hardship
12 claims. Dkt. # 97 at 1. If the *State Defendant* in this suit finds no hardship in proceeding on the
13 current schedule, certainly the Intervenor, who *chose* to litigate this case, cannot either. *Lockyer*,
14 398 F.3d at 1112 (“[B]eing required to defend a suit, without more, does not constitute a ‘clear
15 case of hardship or inequity.’”).⁵
16
17

18 _____
19 ⁴ The additional cases Intervenor cite, *Robinson v. Ardoin* and *Nairne v. Ardoin*, further
20 demonstrate their delay in seeking a stay. The Supreme Court’s stay in *Robinson v. Ardoin*, Nos.
21 22-cv-211 and 22-cv-214, came on June 28, 2022. *See Ardoin v. Robinson*, No. 22-30333,
22 [https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/21a814.ht](https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/21a814.html)
23 [ml](https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/21a814.html). That date was well before briefing was complete on Defendant State of Washington’s motion
24 to continue, *see* Dkt. # 82 (noting the motion to continue for July 8, 2022) and more than three
25 months before Intervenor filed their motion to stay on October 5, 2022. Intervenor also waited
26 over 5 weeks after the *Nairne* stay to file their motion here. *See, e.g.*, Dkt. # 97 at 3 (citing *Nairne*
decision date as August 30, 2022).

⁵ Further, courts in redistricting cases have held that “mere injuries, however substantial, in terms
of money, time and energy necessarily expended in the absence of a stay, are not enough.”
Conkright v. Frommert, 556 U.S. 1401, 1403 (2009) (Ginsburg, J. in chambers) (internal quotation
marks omitted); *see also Cane v. Worcester Cty.*, 874 F. Supp. 695, 698 (D. Md. 1995); *Johnson*
v. Mortham, 926 F. Supp. 1540, 1542 (N.D. Fla. 1996). The same logic applies here.

1 Moreover, the entire premise of Intervenors’ stay motion is flawed. *Merrill* is a different
2 case brought by different parties based on different facts and under a different procedural posture.
3 *Merrill* addresses whether Section 2 of the VRA requires the creation of a second majority-Black
4 congressional district in Alabama and primarily concerns the first prong of the *Gingles* results test.
5 The other two cases cited by Intervenors, *Robinson v. Ardoin*, 2022 WL 2012389, at *5 (M.D. La.
6 2022), and *Nairne v. Ardoin*, 2022 WL 3756195, at *1 (M.D. La. Aug. 30, 2022), also concern the
7 creation of an additional majority-minority district. This case, unlike *Merrill*, *Robinson*, and
8 *Nairne*, does not seek to create an *additional* majority-minority district, but rather challenges an
9 existing, bare-majority Latino district drawn by the State as a façade to deprive Latino voters of
10 an equal opportunity to elect candidates of their choice.

11
12 Intervenors also argue that this case is “on all fours” with *Merrill* because *Merrill* contains
13 an intent claim. Dkt. # 97 at 2. But while some of the consolidated cases in *Merrill* did bring intent
14 claims, the lower court did not decide those claims in its preliminary injunction order. *See, e.g.*,
15 *Milligan v. Merrill*, 582 F. Supp. 3d 924, 936-37 (N.D. Ala. Jan. 24, 2022). Neither *Robinson* nor
16 *Nairne* raise intent claims at all. Thus, this case presents different factual and legal issues not
17 implicated by *Merrill*, *Robinson*, or *Nairne*.⁶

18
19 Furthermore, there is no indication that any decision in *Merrill* will make any discovery
20 the parties are undertaking irrelevant. In originally granting the stay in *Merrill*, Justice Kavanaugh
21 pointedly noted that it “is wrong to claim that the Court’s stay order makes any new law regarding
22 the Voting Rights Act. The Stay order does not make or signal any change to voting rights law.”
23

24
25 ⁶ The third case that Intervenors cite, *Caster v. Merrill*, was consolidated with *Merrill v. Milligan*.
26 *See* U.S. Supreme Court, No. 21-1086 (Feb. 22, 2022), available at <https://www.supremecourt.gov/docket/docketfiles/html/public/21-1086.html>. Thus, *Caster* can hardly be used as a separate example.

1 *Merrill v. Milligan*, 142 S. Ct. 879, 879 (mem.) (2022) (Kavanaugh, J., concurring). Nor is the
2 Court’s action in staying a preliminary injunction granting *relief* in *Merrill* akin to Intervenor’s
3 request to stay *discovery* and all other proceedings in this matter. In the event the Supreme Court
4 rules in *Merrill* in a manner that bears on some part of this case, —by no means a guarantee—this
5 Court can always reopen discovery for limited purposes if necessary.⁷ This is hardly the “clear
6 case” that *Landis* requires a movant to demonstrate, especially where Plaintiffs will suffer
7 significant harm.
8

9 To the extent that Intervenor’s argument requires reading Supreme Court tea leaves based
10 solely on one oral argument, it is far from certain that a wholesale jettisoning of Section 2 or a
11 dramatic rewrite of *Gingles* will occur; all options, including no change to current binding caselaw,
12 remain on the table. *Merrill* may well be resolved in a way that has no bearing on this case. But
13 this is largely beside the point. “The Rule of Law requires that parties abide by, and be able to rely
14 on, what the law *is*, rather than what the readers of tea-leaves predict that it might be in the future.”
15 *Danielson v. Inslee*, 945 F.3d 1096, 1103 (9th Cir. 2019) (internal quotes omitted). Whatever the
16 Supreme Court may announce regarding Section 2 when *Merrill* is decided, this case should
17 proceed based on what the settled law is now. *See, e.g., Agostini*, 521 U.S. at 207; *Ramos v.*
18 *Louisiana*, 140 S. Ct. 1390, 1416 n.5 (2020) (Kavanaugh, J., concurring in part) (“[V]ertical *stare*
19 *decisis* is absolute, as it must be in a hierarchical system with ‘one supreme Court.’ In other words,
20
21
22

23 ⁷ Defendants cannot claim to have advanced information regarding how the Supreme Court will
24 act following the *Merrill* oral argument. Nothing from the argument supports their assumption that
25 *Merrill* will “prove dispositive” of this matter. Dkt. # 97 at 6. *See, e.g., Oral Argument Transcript,*
26 *Merrill v. Milligan, October 4, 2022* at 21:16-21 (Alito, J. noting some of the State of Alabama’s
arguments are “quite far-reaching”),
https://www.supremecourt.gov/oral_arguments/argument_transcripts/2022/21-1086_f204.pdf.

1 the state courts and the other federal courts have a constitutional obligation to follow a precedent
2 of this Court unless and until it is overruled by this Court.” (citations omitted)).

3 Moreover, Intervenors conveniently omit several cases demonstrating that courts,
4 including the U.S. Supreme Court, have repeatedly *denied* stay requests pending the *Merrill*
5 decision. For example, in *LULAC v. Abbott*, a motion to stay pending the disposition in *Merrill*
6 was denied by the district court and Fifth Circuit. *See, e.g., LULAC v. Abbott*, No. 3:21-CV-00259-
7 DCG-JES-JVB (W.D. Tex. April 22, 2022), ECF No. 246 (summary order denying motion to stay
8 case pending *Merrill* before receipt of opposition briefing); *LULAC v. Abbott*, No. 22-50407, 2022
9 WL 2713263, at *2 (5th Cir. May 20, 2022) (“ IT IS FURTHER ORDERED that Appellants’
10 opposed alternative motion to stay depositions pending the Supreme Court’s decision in U.S.S.C.
11 No. 21-1086, *Merrill v. Milligan*, is DENIED.”). The denial of the stay by the Fifth Circuit was
12 then affirmed by the Supreme Court.⁸ Intervenors also fail to mention *United States v. Galveston*
13 *County, Texas, et al.*, No. 3:22-CV-93 (S.D. Tex. May 24, 2022), ECF No. 28 (denying motion to
14 stay proceedings pending *Merrill*). There is good reason to follow these courts’ lead, especially
15 given the harms to Plaintiffs and the differences between this case and those cited by Intervenors.
16
17

18 **C. The orderly course of justice is not served by staying this case.**

19 Where a stay complicates issues, proof, or law, interests in the “orderly course of justice”
20 weigh against a stay. *See Lockyer*, 398 F.3d at 1110. The “orderly course of justice” factor is
21 synonymous with the interests of “judicial economy.” *Naini v. King Cty. Pub. Hosp. Dist. No. 2.*,
22 No. C19-0886-JCC, 2020 U.S. Dist. LEXIS 15015, at *7 (W.D. Wash. Jan. 29, 2020). Here, the
23 interests of judicial economy weigh in favor of denying the stay.
24

25 _____
26 ⁸ *See Guillen v. LULAC*, 142 S. Ct. 2773 (2022),
https://www.supremecourt.gov/orders/courtorders/053122zr_6537.pdf.

1 The parties have already started discovery in this case, scheduled numerous party and non-
2 party depositions in the coming weeks and months, and retained expert witnesses working toward
3 disclosing reports on November 2. The parties must develop a factual record, and, once again,
4 there is no clear indication that *Merrill* will make any discovery the parties in this case take
5 irrelevant. Rather, conducting discovery before a decision in *Merrill* is more likely to help the
6 parties and the Court in determining whether and to what extent the ultimate decision affects this
7 case. *See Embree v. Ocwen Loan Servicing, LLC*, No. 2:17-CV-00156-JLQ, 2017 WL 5632666,
8 at *3 (E.D. Wash. Nov. 22, 2017) (“The court will not engage in [] speculation. Regardless of the
9 outcome of [another case], the parties will need to develop a factual record to show if, or how, that
10 decision applies to the instant matter.”). Allowing discovery to continue will ensure that the factual
11 record is more complete by avoiding stale evidence.
12

13
14 Intervenor’s appeals to judicial economy are meritless. As noted above, Intervenor waited
15 over *eight months* to seek a stay. The parties and the Court have already invested substantial
16 judicial resources in developing the record in this case. Intervenor had months to file this motion
17 and the opportunity to raise the issue when this Court was considering the State’s continuance
18 motion—yet they remained silent. This Court has already scheduled case deadlines and a trial date
19 twice, *see* Dkt. # 92, and Plaintiffs, and likely the Court, have other matters scheduled for trial in
20 spring and /summer of 2023.
21

22 Finally, a stay in this case could delay a resolution until 2024, risking confusion and
23 uncertainty about which maps would apply to elections in that year. *See Republican Nat’l Comm.*
24 *v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020) (discussing the application of the *Purcell*
25 principle to avoid “judicially created confusion”). The precise application of the *Purcell* principle
26 to redistricting cases is unclear at best. *See Merrill*, 142 S. Ct. at 880; *id.* at 888 (Kagan, J.,

1 dissenting). Granting a stay in this case would allow Intervenors to delay the progress of this case
2 to an entirely uncertain date at the expense of Plaintiffs' voting rights on the basis of a Supreme
3 Court opinion that may not even affect this case. That outcome would complicate the issues here
4 and does not serve judicial economy or promote the orderly course of justice.

5 **CONCLUSION**

6 For the foregoing reasons, Intervenors' motion to stay should be denied.

7 Dated: October 17, 2022

8 By: /s/ Edwardo Morfin

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that all counsel of record were served a copy of the foregoing this 17th day of October, 2022 via the Court’s CM/ECF system.

/s/ Edwardo Morfin

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The Honorable Robert S. Lasnik

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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Case No.: 3:22-cv-05035-RSL

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**EXHIBIT 1: DEPOSITION
EXCERPTS**

NOTE FOR MOTION

CALENDAR: October 21, 2022

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

SUSAN SOTO PALMER, et al.,

Plaintiffs,

v.

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

Defendants,

and

JOSE TREVINO, ISMAEL G. CAMPOS,
and State Representative
ALEX YBARRA,

Intervenor-Defendants.

No. 3:22-cv-05035-RSL

DEPOSITION UPON ORAL EXAMINATION OF
PAUL CAMPOS

Monday, August 15, 2022
9:00 a.m. to 4:40 p.m.

Lowe Graham Jones, PLLC
1325 Fourth Avenue, Suite 1130
Seattle, Washington

REPORTED BY: LAKESIDE REPORTING
Jeanne M. Gersten, RDR, CCR 2711
Registered Diplomate Reporter
(833) 365-3376
Jeanne@LakesideReporting.com
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1 Q (By Ms. Leeper) How about for the public records
2 lawsuit?

3 MS. GOLDMAN: Objection, vague.

4 A What was the question for that?

5 Q (By Ms. Leeper) Yeah. Were you asked to conduct any
6 searches of your Dave's Redistricting app account in
7 connection with the public records lawsuit?

8 A Yes, I think.

9 Q Did you make any productions from your Dave's
10 Redistricting app account in connection with the public
11 records lawsuit?

12 A No.

13 Q Have you deleted any emails or electronic
14 communications that you made or received in connection
15 with the 2021 redistricting process?

16 A No, I don't believe so.

17 Q Have you deleted any text messages or voice mails
18 that you made or received in connection with the 2021
19 redistricting process?

20 A I may have. I don't remember.

21 Q Have you ever used any methods of communication set
22 to automatically delete communications that you made or
23 received in connection with the 2021 redistricting
24 process?

25 A No.

1 A No.

2 Q Did you ever speak with Anton Grose about the
3 legislative redistricting of 14 or 15?

4 A Yes.

5 Q Did you ever speak with Osta Davis regarding the
6 redistricting of Legislative Districts 14 or 15?

7 A Probably.

8 Q Did you ever speak with Ms. Dominique Meyers about
9 the Legislative Districts 14 or 15?

10 A I doubt it.

11 Q How about Ali O'Neil?

12 A Again, I don't think so.

13 Q You said that you think you may have spoken with
14 Commissioner Graves. To your recollection when did that
15 communication occur?

16 A I don't know.

17 Q Do you remember any content of discussions with
18 Commissioner Graves about Legislative Districts 14 or 15?

19 A Not specifically, no.

20 Q When did your communications with Anton Grose about
21 Legislative Districts 14 or 15 occur?

22 A About the same time. I don't know.

23 Q What is about the same time?

24 A The same time I don't remember having it with
25 Commissioner Graves.

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1 dems versus republicans.

2 Q. So the analysis included -- when you say demographic
3 data, what do you mean by that?

4 A. I didn't say demographic data. I said racial data.
5 And I meant demographic data. I meant race and
6 ethnicity.

7 Q. Was that -- do you know, was that race and ethnicity
8 broken down by voting age population?

9 A. I do not know. I really did not supervise that. If
10 the request came in from the chair, I'd say, Justin,
11 Daniel, handle it. You know, and if I have time and
12 they would CC me on it and maybe I'd look at it, but it
13 wasn't really a concern of mine.

14 Q. And do you know what else -- strike that.

15 What form was the analysis that Justin Bennett
16 produced to Sarah Augustine on the Barreto maps? What
17 form did it take?

18 MR. MILLSTEIN: Objection to form.

19 THE WITNESS: I really don't recall. I can't
20 remember if it was an Excel document or if it was a map
21 or a combination of both.

22 BY MS. WAKNIN:

23 Q. Do you remember anything else about this analysis that
24 Justin Bennett provided to Sarah Augustine about the
25 legislative district maps after the Barreto report?

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

SUSAN SOTO PALMER, et al.,

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Defendants,

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ALEX YBARRA,

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No. 3:22-cv-05035-RSL

DEPOSITION UPON ORAL EXAMINATION OF
OSTA DAVIS

Friday, August 19, 2022
9:10 a.m. to 5:50 p.m.

Office of the Attorney General
1250 Pacific Avenue
Tacoma, Washington

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1 Commissioner Sims prior to the meeting?

2 A My understanding was that Commissioners Sims and
3 Graves had been in communication before this meeting, --

4 Q Okay.

5 A -- and that I don't know what those conversations
6 necessarily looked like.

7 Q Okay. But the reason that they chose that -- As far
8 as you know the reason that they chose that race was
9 because of the analysis that you had done?

10 MS. GOLDMAN: Objection, misstates the
11 testimony.

12 A I know that I had done that analysis. My assumption
13 was that the Republicans had done their own analysis.

14 Q (By Mr. Thrift-Viveros) Um-hmm.

15 A So it would be hard to say that my analysis --

16 Q Okay.

17 A -- would have motivated Commissioner Graves in any
18 way.

19 Q Okay. I had one more question. Do you know why --
20 -- Sorry.

21 Were Commissioners Fain and Walkinshaw present at
22 that meeting that Commissioner Graves and Sims agreed to
23 use that race as their electoral performance metric?

24 A No.

25 Q Do you know if -- As far as you know was

1 Commissioner Walkinshaw consulted prior to this agreement
2 to use this as the metric?

3 A I don't remember.

4 Q Okay. And what about if Commissioner Fain was
5 consulted prior to this agreement?

6 A I don't remember.

7 Q Do you know why Commissioner Walkinshaw and
8 Commissioner Fain were not included in this agreement?

9 A Yes.

10 Q Can you tell me why?

11 A Because there was a decision to negotiate in dyads.

12 Q Okay. Can you explain what a dyad is?

13 A The commission defined the dyads as two
14 commissioners of differing political parties.

15 Q Okay. And how did that sort of dyad system work?
16 Can you kind of generally explain to me?

17 A Primarily Commissioner Sims and Commissioner Graves
18 would negotiate in a dyad, and that Commissioners Fain and
19 Walkinshaw would negotiate in a dyad.

20 Q Okay. And were these dyads stable or the same
21 throughout the redistricting process, as far as you know?

22 A I guess I -- Certainly other commissioners talked
23 together, talked to each other in groups of two; but as
24 far as negotiating dyads, that was the primary structure
25 throughout.

The Honorable Robert S. Lasnik

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

SUSAN SOTO PALMER, et. al.,

Plaintiffs,

v.

STEVEN HOBBS, et. al.,

Defendants,

and

JOSE TREVINO, ISMAEL CAMPOS,
and ALEX YBARRA,

Intervenor-Defendants.

Case No.: 3:22-cv-05035-RSL

Judge: Robert S. Lasnik

**[PROPOSED] ORDER
DENYING INTERVENOR-
DEFENDANTS' MOTION TO
STAY**

This matter came before the Court on Intervenor-Defendants' Motion to Stay. The Court has reviewed and considered all briefing and any supporting papers presented to the Court, as well as any hearing in this matter.

Based on the foregoing, it is hereby ORDERED that Intervenor-Defendants' Motion to Stay is DENIED.

IT IS SO ORDERED.

DATED this ____ day of _____, 2022.

/s/ _____
The Honorable Robert S. Lasnik
U.S. District Judge

By: /s/ *Edwardo Morfin*

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CERTIFICATE OF SERVICE

I certify that all counsel of record were served a copy of the foregoing this 17th day of October, 2022 via the Court's CM/ECF system.

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