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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BENANCIO GARCIA III,

Plaintiff,

v.

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

Defendants.

CASE NO. 3:22-cv-05152-RSL-
DGE-LJCV

OPINION AND ORDER
DISMISSING PLAINTIFF’S
CLAIM AS MOOT

Chief District Judge David G. Estudillo authored the majority opinion, in which District Judge Robert S. Lasnik joined. Circuit Judge Lawrence J.C. VanDyke filed a dissenting opinion.¹

Plaintiff Benancio Garcia III brings suit arguing that Washington Legislative District 15 (“LD 15”) in the Yakima Valley is an illegal racial gerrymander in violation of the Equal

¹ Because Plaintiff “challeng[ed] the constitutionality of the apportionment” of a “statewide legislative body” under 28 U.S.C. § 2284(a), the Chief Judge of the Ninth Circuit designated a three-judge panel to hear Plaintiff’s constitutional claim. (See Dkt. No. 18.)

1 Protection Clause of the Fourteenth Amendment. The Panel sat for a three-day trial from June
2 5th to June 7th to hear evidence regarding Plaintiff’s Equal Protection Clause claim.² In light of
3 the court’s decision in *Soto Palmer*, the Court DISMISSES Plaintiff’s claim as moot.

4 I MOOTNESS

5 “[T]he judicial power of federal courts is constitutionally restricted to ‘cases’ and
6 ‘controversies.’” *Flast v. Cohen*, 392 U.S. 83, 94 (1968). “There is thus no case or controversy,
7 and a suit becomes moot, when the issues presented are no longer live or the parties lack a
8 legally cognizable interest in the outcome.” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (cleaned
9 up). Article III’s case-or-controversy requirement prevents federal courts from issuing advisory
10 opinions. *See id.* A party must have “a specific live grievance,” and cannot seek to litigate an
11 “abstract disagreement over the constitutionality” of a law or other government action. *Lewis v.*
12 *Cont’l Bank Corp.*, 494 U.S. 472, 479 (1990) (cleaned up).

13 The Court finds that Plaintiff’s challenge to the constitutionality of LD 15 is moot given
14 the *Soto Palmer* court’s finding that LD 15 violates § 2 of the Voting Rights Act (“VRA”).
15 Plaintiff seeks declaratory relief determining that LD 15 “is an illegal racial gerrymander in
16 violation of the Equal Protection Clause of the Fourteenth Amendment” and an injunction
17 “enjoining Defendant from enforcing or giving any effect to the boundaries of [] [LD 15],
18 including an injunction barring Defendant from conducting any further elections for the
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21 ² The Panel heard evidence for the *Garcia* case concurrent with evidence presented for parallel
22 litigation in *Soto Palmer v. Hobbs*, No. 3:22-cv-5035-RSL (W.D. Wash.). For purposes of judicial
23 economy, the Court refers the reader to the procedural and factual background in *Soto Palmer*,
24 2023 WL 5125390, at *1–3 (W.D. Wash. Aug. 10, 2023) and this Court’s prior order (Dkt. No.
56). The Court presumes reader familiarity with the facts of this case. This order only addresses
Plaintiff Benancio Garcia III’s Equal Protection claim.

1 Legislature based on [] [LD 15].” (Dkt. No. 14 at 18.) Plaintiff further requests the Court order
2 a new legislative map be drawn. (*Id.*)

3 The *Soto Palmer* court determined that LD 15 violated § 2 of the VRA’s prohibition
4 against discriminatory results. *See Soto Palmer*, 2023 WL 5125390, at *11. In so deciding, the
5 court found LD 15 to be invalid and ordered that the State’s legislative districts be redrawn. *Id.*
6 at *13. Since LD 15 has been found to be invalid and will be redrawn (and therefore not used for
7 further elections), the Court cannot provide any more relief to Plaintiff. Plaintiff does not assert
8 that any new district drawn by the Washington State Redistricting Commission (“Commission”)
9 would be a “mere continuation[] of the old, gerrymandered district[.]” *North Carolina v.*
10 *Covington*, 138 S. Ct. 2548, 2553 (2018). Plaintiff therefore lacks a specific, live grievance, and
11 his case is moot.

12 Traditional principles of judicial restraint also counsel against resolving Plaintiff’s Equal
13 Protection Clause claim. “A fundamental and longstanding principle of judicial restraint requires
14 that courts avoid reaching constitutional questions in advance of the necessity of deciding them.”
15 *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 445 (1988); *see also Three*
16 *Affiliated Tribes of Fort Berthold Rsrv. v. Wold Eng’g, P.C.*, 467 U.S. 138, 157 (1984) (“It is a
17 fundamental rule of judicial restraint, however, that this Court will not reach constitutional
18 questions in advance of the necessity of deciding them.”). The court’s decision in *Soto Palmer*
19 makes any decision in the instant case superfluous. A new Commission will draw new
20 legislative districts in the Yakima Valley and, if challenged thereafter, the propriety of the new
21 districts will be decided by analyzing the motivations and decisions of new individuals who
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1 constitute the Commission.³ The Court cannot and will not presume that the new Commission
2 will be motivated by the same factors that motivated its predecessor. Federal courts are courts of
3 limited jurisdiction, and to unnecessarily decide a constitutional issue where there are alternate
4 grounds available or where there is an absence of a case or controversy is to overstep our
5 “proper, limited role in our Nation’s governance.” *Biden v. Nebraska*, 600 U.S. ___, 143 S. Ct.
6 2355, 2384 (2023) (Kagan, J., dissenting).

7 Our dissenting colleague disagrees that the instant case is moot. In his view, the
8 Commissioners racially gerrymandered the 2021 Washington Redistricting Map in violation of
9 the Equal Protection Clause and therefore “the map was ‘void *ab initio*.’” Additionally, the
10 dissent argues that longstanding principles of judicial restraint and constitutional avoidance are
11 inapplicable here because the decision in *Soto Palmer* does not completely moot the relief sought
12 by Plaintiff. These arguments are unconvincing.

13 First, the view that LD 15 was void *ab initio* presupposes that Plaintiff established an
14 Equal Protection violation. To the contrary, a full analysis of the record presented does not yield
15 such a result. The Court declines to issue an advisory opinion on the validity of Plaintiff’s Equal
16 Protection claim, however. Rather, it is sufficient to note only that we disagree with the dissent’s
17 summary and interpretation of the facts surrounding the creation of LD 15. Importantly, the
18 Commissioners’ testimony on the specific issue of whether race predominated in the formation
19 of LD 15 is absent from the dissent’s summary of the facts, and the Court encourages readers to
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23 ³ In the event that the Commission fails to draw a new map by the deadline set by the *Soto Palmer*
24 court, the parties will submit proposed maps to the *Soto Palmer* court and the court will adopt and
enforce a new redistricting plan. *See Soto Palmer*, 2023 WL 5125390, at *13.

1 examine the Commissioners’ testimony in full.⁴ This testimony weighs heavily against finding
2 that race predominated in the drawing of LD 15 and against finding an Equal Protection
3 violation.⁵

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5 ⁴ Commissioner April Sims, for example, specifically disclaimed that race was the most important
6 factor. (See Dkt. No. 73 at 77.) As she testified, “I would not agree that [race] [] was the most
7 important factor. But that it was a factor.” (*Id.*) Commissioner Brady Walkinshaw similarly noted
8 that the Commissioners discussed a number of factors, including race, but “none of those [factors]
9 were predominant.” (*Id.* at 124.) He further emphasized the impact that the Commissioners’
10 desire to unify the Yakama Nation into one legislative district had on the map (*see id.*), a factor
11 that all Commissioners attested was important but is conspicuously absent from our colleague’s
12 analysis. Commissioner Joe Fain testified that his overriding interest in drawing maps for LD 15
13 was to ensure “competitiveness.” (See Dkt. No. 74 at 48, 58.) He also testified that he believed
14 Commissioner Walkinshaw would have voted for a map in LD 15 that would not have had a
15 majority Latino Citizen Voting Age Population (“CVAP”). (*Id.* at 51.) Finally, Commissioner
16 Paul Graves testified that “race and the partisan breakdown of the district were” tied in his mind
17 as the most important factors. (Dkt. No. 75 at 85.)

18 ⁵ The dissent’s “ab initio” argument leads to the surprising assertion that the *Soto Palmer* court
19 should have declined to issue an opinion in that case. *Soto Palmer* was the first-filed challenge to
20 the redistricting map, and it presented a clearly justiciable case and controversy. Federal courts
21 have a “virtually unflagging obligation . . . to exercise the jurisdiction given them,” *Colorado River*
22 *Water Conservation Dist. v. U.S.*, 424 U.S. 800, 817 (1976), and our dissenting colleague makes
23 no effort to show that one of the “exceptional” circumstances that could justify a district court’s
24 refusal to exercise or postponement of the exercise of its jurisdiction existed, *Id.* at 813 and 817.
Although the intervenors in *Soto Palmer* twice requested that the case be stayed, they did so on
the ground that judicial efficiency would be served by waiting for the Supreme Court’s decision
in *Allen v. Milligan*, 599 U.S. ___, 143 S. Ct. 1487 (2023). At no point prior to the dissemination
of the dissent did anyone suggest that a decision in *Soto Palmer* would be advisory or otherwise
improper.

More importantly, the suggestion that the VRA claim should have been stayed or held in
abeyance while the Equal Protection claim was resolved is not supported by case law or legal
analysis. The dissent does not discuss whether a stay of *Soto Palmer* would have been appropriate
pending the resolution of *Garcia* under the rubric established in *Landis v. N. Am. Co.*, 299 U.S.
248, 254-56 (1936), nor does it cite any cases in which a decision on a VRA claim was postponed
because of a related Equal Protection challenge. *Milligan* itself presented just such a confluence
of claims, and the Supreme Court addressed the appropriateness of injunctive relief on the VRA
claim without considering, much less prioritizing, the pending Equal Protection challenge. *See*
also League of United Latin Am. Citizens v. Perry, 548 U.S. 399, 410 (2006) (resolving VRA
claims without reaching the companion Equal Protection claim); *Singleton v. Allen*, 2:21-cv-1291-
AMM-SM-TFM, Dkt. # 272 at 7–8, 194–95 (N.D. Ala. Sept. 5, 2023) (resolving VRA claims and
reserving ruling on Equal Protection claims in light of the fundamental and longstanding principles
of judicial restraint and constitutional avoidance).

1 It is also erroneous to argue that “resolving *Soto Palmer* in the *Soto Palmer* plaintiffs’
2 favor does not moot *Garcia*.” As noted, LD 15 will be redrawn and will not be used in its
3 current form for any future election. The *Soto Palmer* court has therefore granted Plaintiff
4 complete relief for purposes of our mootness analysis. See *New York State Rifle & Pistol Ass’n,
5 Inc. v. City of New York, New York*, 140 S. Ct. 1525, 1526 (2020) (vacating judgment as moot
6 where New York City amended its laws to grant “the precise relief that petitioners requested in
7 the prayer for relief in their complaint” notwithstanding requests for declaratory and injunctive
8 relief from future constitutional violations).⁶

9 Our colleague argues that this case is not moot because Plaintiff may obtain partial
10 injunctive and declaratory relief. Specifically, the Court could declare that LD 15 was an illegal
11 racial gerrymander and enjoin the state from “performing an illegal racial gerrymander when it
12 redraws the map.” This type of relief is insufficient to avoid a finding of mootness. It goes
13 without saying that a federal court may only direct parties to undertake activities that comply
14 with the Constitution, and the *Soto Palmer* court’s directive to the State to redraw LD 15
15 properly presumes that the State will comply with the Constitution when it does so lest the future
16 district be challenged once again. Cf. *Holloway v. City of Virginia Beach*, 42 F.4th 266, 275 (4th

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18 ⁶ The dissent attempts to distinguish *New York State Rifle & Pistol Ass’n*, but the petitioners in
19 that case argued, like our colleague, that an intervening change to New York City’s firearms laws
20 did not moot their request for declaratory and injunctive relief because of the continued possibility
21 of future harm from New York City’s unconstitutional firearms licensing scheme. See Petitioners’
22 Response to Respondents’ Suggestion of Mootness at 15–17, *New York State Rifle & Pistol Ass’n*,
23 140 S. Ct. 1525 (No. 18-280). As the petitioners noted in their brief, “nothing in the City’s revised
24 rule precludes the previous version of the rule, which governed for nearly two decades, from
having continuing adverse effects.” *Id.* at 16. The petitioners specifically sought a declaration
from the Supreme Court that “that the City’s longstanding restrictive [firearms] licensing scheme
is incompatible with the Second Amendment” and that any attempt to impose a licensing scheme
was “null and void ab initio.” *Id.* The Supreme Court, however, rejected the petitioners’ argument
and held that the case was moot notwithstanding the continued possibility of constitutional harm
from the newly revised rule.

1 Cir. 2022) (rejecting argument that VRA case was not moot and Plaintiffs were entitled to court
2 order “directing implementation of a new system that ‘compl[ies] with Section 2’” of the VRA in
3 light of changes to state law that provided otherwise complete relief).

4 The dissent asserts that “the order in *Soto Palmer* ensures that [Garcia] will not receive
5 what he argues is a constitutionally valid legislative map” because his “claimed injury is not
6 merely capable of repetition; it almost is certain to repeat itself.” In the dissent’s opinion, Garcia
7 will most certainly suffer injury because *Soto Palmer* “ordered that the State engage in *even*
8 *more* racial gerrymandering” than that claimed by Garcia in this case. But this claimed injury
9 from a future legislative district is speculative because compliance with § 2 of the VRA, as
10 ordered in *Soto Palmer*, would not result in a violation of the Equal Protection Clause. *See*
11 *Cooper v. Harris*, 581 U.S. 285, 306 (2017) (“States enjoy leeway to take race-based actions
12 reasonably judged necessary under a proper interpretation of the VRA.”); *see also Milligan*, 143
13 S. Ct. at 1516–17 (“[F]or the last four decades, this Court and the lower federal courts have
14 repeatedly applied the effects test of § 2 as interpreted in *Gingles* and, under certain
15 circumstances, have authorized race-based redistricting as a remedy for state districting maps
16 that violate § 2.”).

17 As the dissent concedes, “the Supreme Court has given States ‘leeway’ to draw lines on
18 the basis of race in redistricting when States have good reasons, based in the evidence, to believe
19 the racial gerrymander necessary under the VRA.” The *Soto Palmer* court detailed in depth why
20 a VRA compliant district is required for the Yakima Valley. *See, e.g.*, 2023 WL 5125390, at *5–
21 6, 11 (finding that the three *Gingles* factors were met and that the State had “impair[ed] the
22 ability of Latino voters in [] [the Yakima Valley] to elect their candidate of choice on an equal
23 basis with other voters”). The dissent would find that the prior Commissioners failed to judge a
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1 VRA district necessary, and therefore any racial prioritization that the Commissioners engaged
2 in would not survive strict scrutiny. But this determination is necessarily fact-specific and only
3 applicable to the actions of the prior Commission. By the dissent’s own admission, so long as
4 the State judges the use of race necessary to comply with the VRA it is not unlawful for the State
5 to create a district with a higher Latino CVAP.

6 The dissent also argues the case is not moot because Plaintiff may want to appeal this
7 case to the Supreme Court. Whether Plaintiff may desire to utilize this litigation to “challenge
8 current precedent that considers compliance with the VRA a sufficient reason to racially
9 gerrymander” is immaterial to the issue of whether a case is moot. Neither *Wis. Legislature v.*
10 *Wis. Elections Comm’n*, 142 S. Ct. 1245 (2022), nor *Allen v. Santa Clara Cnty. Corr. Peace*
11 *Officers Ass’n*, 38 F.4th 68 (9th Cir. 2022), stands for the proposition that a trial court, in
12 deciding whether a case is moot, should consider how a party might utilize the litigation to
13 challenge established Supreme Court precedent. Indeed, such an argument reinforces the
14 majority’s finding that the case is moot because a desire to appeal binding Supreme Court
15 precedent, untethered from any specific injury, is far removed from a specific, live
16 controversy.⁷ It “would [also] reverse the canon of [constitutional] avoidance . . . [by
17 addressing] divisive constitutional questions that are both unnecessary and contrary to the
18 purposes of our precedents under the Voting Rights Act.” *Bartlett v. Strickland*, 556 U.S. 1, 23
19 (2009).

20 This Court “is not empowered to decide moot questions or abstract propositions, or to
21 declare, for the government of future cases, principles or rules of law which cannot affect the
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23 ⁷ The dissent, like the State of Alabama, might wish for a different interpretation of § 2 of the VRA
24 than that which has prevailed in this country for nearly forty years. The United States Supreme
Court, however, recently rejected Alabama’s invitation to do so in *Milligan*.

1 result as to the thing in issue in the case before it.” *People of State of California v. San Pablo &*
2 *T.R. Co.*, 149 U.S. 308, 314 (1893). The fact remains that the *Soto Palmer* court has ordered the
3 State to redraft legislative districts in the Yakima Valley. Having done so, the relief Plaintiff
4 seeks in this litigation is now moot.

5 **II CONCLUSION**

6 Accordingly, the Court DISMISSES as moot Plaintiff’s claim that LD 15 violates the
7 Equal Protection Clause. A judgment will be entered concurrent with this order.

8 Dated this 8th day of September, 2023.

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12 David G. Estudillo
United States District Judge

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15 Robert S. Lasnik
United States District Judge
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