

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426
21 CVS 500085

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, INC.;
HENRY M. MICHAUX, JR., et al.,

Plaintiffs,

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL,
in his official capacity as Chair of the
House Standing Committee on
Redistricting, et al.,

Defendants.

***NCLCV* PLAINTIFFS'
PROPOSED SCHEDULE**

Although the parties met and conferred in good faith and attempted to reach agreement on a proposed schedule, they were not able to reach agreement. Hence, the North Carolina League of Conservation Voters, Inc. (“NCLCV”) et al. (“*NCLCV* Plaintiffs”) propose the following schedule, which aims—in the limited time available—to permit full and appropriate factual development, while allowing the Court and the parties proper flexibility.

Consolidation

For efficiency, the *NCLCV* and *Harper* cases should be consolidated, as the Court ordered during the preliminary-injunction proceedings.

Pleadings

Any amended pleadings shall be filed by 5:00 p.m., Wednesday, December 15, 2021. Given that the Supreme Court has directed the Court to reach “a final judgment on the merits of plaintiffs’ claims,” allowing amendment is appropriate, as Rule 15 permits, especially because Defendants have not answered.

Defendants shall answer by 5:00 p.m., Friday, December 17, 2021.

Evidence and Expert Reports

Opening evidence. The parties shall exchange affirmative evidence, including expert reports and fact-witness affidavits, by 12:00 noon, Monday, December 20, 2021. All such evidence shall be deemed to be part of the record. With each opening and rebuttal expert report, each party will produce the source code, source data, input parameters, and output data for the analyses conducted by that expert for that report.

Rebuttal evidence. The parties shall exchange rebuttal evidence (including rebuttal expert reports) by 12:00 noon, Monday, December 27, 2021.

The Legislative Defendants have improperly tried to force Plaintiffs to stand on the expert reports they submitted with their motions for a preliminary injunction, while giving themselves until December 23, 2021 to supplement Mr. Trende’s report. The Supreme Court, however, has directed this Court to reach “a final judgment on the merits of plaintiffs’ claims.” It would be error to force either side to proceed to final judgment based on reports submitted to support a preliminary injunction. That is especially true because the *NCLCV* Plaintiffs sought a preliminary injunction only

as to their partisan-gerrymandering claims—not their racial vote-dilution or *Stephenson* claims, which they are entitled to now litigate. And it is even more true because, when the *NCLCV* Plaintiffs submitted their expert report at the preliminary-injunction stage, Defendants had not answered (or indeed submitted any briefing, pleading, or evidence).

In particular, there is no basis for how the Legislative Defendants’ proposal treats the parties *unequally*. Indeed, the *NCLCV* Plaintiffs submitted their expert report on November 16, 2021, just 12 days after the General Assembly enacted the new redistricting plans. The Legislative Defendants then took 15 days, until December 1, 2021, to submit the report of Mr. Trende. The *NCLCV* Plaintiffs’ proposal appropriately gives all parties, including the Legislative Defendants, until December 20 to produce opening expert reports to support the merits of their claims or defenses.

The Legislative Defendants’ proposal is especially inappropriate insofar as it gives them until December 23, 2021—two days before Christmas, and 37 days after they received Professor Duchin’s report—to produce expert reports and then requires Plaintiffs to produce rebuttal reports four days later on December 27, 2021 (two days after Christmas). The *NCLCV* Plaintiffs’ proposal, by contrast, treats both sides fairly and gives both sides breathing room before and after Christmas.

Status Reports and Status Conference

The *NCLCV* Plaintiffs are hopeful that through the exchange of expert reports and further meet-and-confer discussions, the parties can resolve or narrow any

disputed factual issues, so as to eliminate the need for or substantially narrow the scope of any evidentiary hearing. The *NCLCV* Plaintiffs propose that, by 12:00 noon, Tuesday, December 28, 2021, each party submit a status report providing its position on what, if any, disputed legal and/or factual issues remain unresolved and a proposed process for resolving those issues, including whether some of those issues warrant an evidentiary hearing and/or oral argument.

We further propose that on Wednesday, December 29, 2021, at a time set by the Court, the Court hold a status conference (either telephonic or live) to establish a schedule for further proceedings.

Reserved days for argument or hearings

The Court and the parties will reserve Wednesday and Thursday, January 5 and 6, 2022, for any hearing or argument that the Court chooses to hold. Should the Court hold an evidentiary hearing, the parties will exchange witness lists and exhibits by 5:00 p.m. on Monday, January 3, 2022, subject to modification as appropriate by the Court at the December 29 status conference.

Proposed findings of fact and conclusions of law

Subject to modification of the deadline by the Court at its December 29 status conference, the parties will submit proposed findings of fact and conclusions of law by 5:00 p.m. on Friday, January 7, 2022.

Summary

For the Court's convenience, the *NCLCV* Plaintiffs provide the following summary chart:

5:00 p.m., Wednesday, December 15, 2021	Deadline to amend complaints
5:00 p.m., Friday, December 17, 2021	Deadline to answer complaints
12:00 noon, Monday, December 20, 2021	Parties exchange affirmative evidence (including expert reports and fact-witness affidavits)
12:00 noon, Monday, December 27, 2021	Parties exchange rebuttal evidence, including rebuttal expert reports
12:00 noon, Tuesday, December 28, 2021	Parties exchange status reports providing each party's position on what, if any, disputed legal and/or factual issues remain unresolved and a proposed process for resolving those issues, including whether some of those issues warrant an evidentiary hearing and/or oral argument
Wednesday, December 29, 2021, at a time set by the Court	Status conference (either telephonic or live) to establish a schedule for further proceedings
January 5 and 6, 2022	Reserved for argument and/or hearing. If a hearing is held, exchange witness lists and exhibits by 5:00 p.m. on Monday, January 3, 2022
5:00 p.m., Friday, January 7, 2022	Parties to submit proposed findings of fact and conclusions of law (subject to modification by Court order).

Dated: December 10, 2021

Respectfully submitted,

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