

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA LEAGUE, OF
CONSERVATION VOTERS, INC., *et*
al.,

Plaintiffs,

v.

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

Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 015426

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STATE OF NORTH CAROLINA

COUNTY OF WAKE

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.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 500085

CASE SCHEDULING ORDER

THESE MATTERS came on to be heard before the undersigned three-judge panel on the Court's own motion for entry of a scheduling order for the purpose of efficient management of these matters.

NCLCV Plaintiffs (Civil Action No. 21 CVS 015426) filed their Complaint contemporaneously with a Motion for Preliminary Injunction pursuant to Rules 7(b) and 65 of the North Carolina Rules of Civil Procedure on November 16, 2021. NCLCV Plaintiffs challenge both state legislative and congressional districts recently enacted by the General Assembly on partisan gerrymandering, racial gerrymandering, and whole-county provision grounds. Harper Plaintiffs (Civil Action No. 21 CVS 500085) filed their Complaint on November 18, 2021, and a Motion for Preliminary Injunction pursuant to Rule 65 and N.C.G.S. § 1-485 on November 30, 2021. Harper Plaintiffs challenge only the recently-enacted congressional districts and only on partisan gerrymandering grounds.

On November 19, 2021, and November 22, 2021, the NCLCV and Harper actions, respectively, were assigned to the undersigned three-judge panel of Superior Court, Wake County, pursuant to N.C.G.S. § 1-267.1. On December 3, 2021, the undersigned consolidated these respective cases pursuant to Rule 42 of the North Carolina Rules of Civil Procedure and heard NCLCV and Harper Plaintiffs' [hereinafter collectively referred to as "Plaintiffs"] Motions for Preliminary Injunction. On December 3, 2021, after considering the extensive briefing and oral arguments on the motions, the undersigned denied Plaintiffs' Motions for Preliminary Injunction.

On December 3, 2021, Plaintiffs filed a notice of appeal with the North Carolina Court of Appeals. After initially partially granting a temporary stay of the candidate filing period for the 2022 elections, the North Carolina Court of Appeals denied Plaintiffs' temporary stay on December 6, 2021.

On December 8, 2021, on Plaintiffs' Petitions for Discretionary Review Prior to Determination by the Court of Appeals, Motion to Suspend Appellate Rules to Expedite a Decision, and Motion to Suspend Appellate Rules and Expedite Schedule, the Supreme Court of North Carolina granted a preliminary injunction and temporarily stayed the candidate filing period "until such time as a final judgment on the merits of plaintiffs' claims, including any appeals, is entered and remedy, if any is required, has been ordered." SCONC order on Pls motion p. 3. The Order further directed this Court to hold proceedings on the merits of Plaintiffs' claims and provide a written ruling on or before January 11, 2022.

As an initial matter, this Court notes that in a previous redistricting case, *Common Cause v. Lewis*, No. 18-CVS-014001 (N.C. Super. Ct.), heard by a three-judge panel in 2019 in which only state legislative districts were challenged solely under partisan gerrymandering grounds in one civil action, the discovery period lasted approximately five-and-a-half months, the trial itself lasted two weeks, and the 357-page Final Judgment was entered nearly four weeks after the submission of proposed findings of fact and conclusions of law. The amount of discovery, length of trial, and comprehensive nature of the Final Judgment was due largely in part to the requirements of N.C.G.S. § 120-2.3, which requires that every order or judgment

declaring as unconstitutional an act of the General Assembly that apportions or redistricts State legislative or congressional districts specify all facts supporting that declaration, state separately and with specificity the court's conclusions of law on the declaration, and identify every defect found by the court both as to the plan as a whole and as to individual districts. Furthermore, the remedial phase in that case lasted close to two months in large part because the General Assembly must be afforded the first opportunity to enact new redistricting plans when those plans are found to be invalid, see N.C.G.S. § 120-2.4 and *Stephenson v. Bartlett*, 355 N.C. 354, 385, 562 S.E.2d 377, 398 (2002), and the trial court was again tasked with reviewing those remedial districts.

In light of our Supreme Court's Order in this case and the history of redistricting litigation in our state courts described above, this Court requested that the parties report to the Court on December 10, 2021, with proposed scheduling order dates and deadlines necessary to comport with the January 11, 2022, deadline for this Court to enter a written ruling.

Based upon the limited timeframe for the parties to develop the evidence that will then be received by the Court, the similarly limited timeframe in which this Court must then review that evidence to make findings of fact and conclusions of law so as to enter a Final Judgment resolving the merits of all claims asserted by the collective Plaintiffs in these consolidated cases, and after considering the submissions of the parties, the Court hereby **ORDERS** the following:

1. The parties shall adhere to the following schedule:

Date	Action
12/15/2021	Deadline to file amended complaints
12/17/2021	Deadline to file responsive pleadings
12/23/2021	Deadline for parties' exchange of evidence (in the form of expert witness reports, fact witness affidavits, and exhibit lists)
12/27/2021	Deadline for parties' exchange of witness lists.
12/28/2021	Deadline for parties' exchange of rebuttal evidence, including rebuttal expert reports.
12/28/2021	Deadline for parties to notify the court of the number of attorneys that will be appearing on behalf of each party and the number of individual plaintiffs and individual defendants who plan to attend.
12/31/2021 ¹	Deadline to conduct any expert discovery depositions. Expert discovery depositions may be by video, limited to 4 hours per expert. Deadline to conduct depositions of fact witnesses.
12/31/2021	Deadline for submission to the Court of proposed findings of fact and conclusions of law (in lieu of pre-trial briefs). Deadline for submission of initial stipulation of facts.
12/31/2021	Deadline for submission to the Court of final exhibit lists, witness lists, and pre-marked exhibits for trial (deposition transcripts may be submitted to the court on 1/3/2022).
1/3/2022-1/5/2022	Trial
1/6/2022	Closing Arguments

2. All submissions to the court must be made by 5:00 PM EST on any date specified in this Order.

3. Electronic copies of all documents filed with the Clerk of Court, all Expert Witness Reports upon time of service on an opposing party, and all other

¹ Pursuant to the North Carolina Judicial Branch [Holiday Schedule](#), courthouse offices, including the Clerk of Superior Court, will be closed on December 31, 2021, so filing will not be available.

documents required by this Order to be submitted to the Court by the deadlines contained herein, shall be promptly transmitted by email to:

(a) 10th Judicial District Trial Court Administrator Kellie Myers
(Kellie.Z.Myers@nccourts.org), and

(b) N.C. Judicial Fellow Alison Rossi
(Alison.J.Rossi@nccourts.org).

All counsel shall be cc'd on any email correspondence required by this Order. Counsel should be familiar with *19 Formal Ethics Opinion 4* issued by the N.C. State Bar in July 2021, entitled *Communications with Judicial Officials*, and communications required by this Order should comport therewith.

4. Expert reports produced to an opposing party shall be accompanied by all source code, source data, input parameters, and all outputted data.

5. De bene esse depositions may only be taken with leave of the Court.

6. Trial will commence at 9:00 AM on January 3, 2022, and the presentation of evidence will conclude by 5:00 PM on January 5, 2022. There will be no opening statements. The collective Plaintiffs and collective Defendants in these consolidated cases will each be given nine (9) hours in which to present their direct evidence and conduct any cross examination. Closing arguments will commence at 9:00 AM on January 6, 2022. The collective Plaintiffs and collective Defendants in these consolidated cases will each be given one (1) hour of closing argument. The parties are charged with keeping track of their time.

7. The trial will take place at Campbell University School of Law (225 Hillsborough Street, Raleigh, NC 27603). Any logistical or other questions the parties may have shall be directed solely to TCA Kellie Myers and Judicial Fellow Alison

Rossi for handling. Under no circumstances are the parties to contact Campbell University School of Law personnel with these questions. TCA Kellie Myers will provide trial information and courtroom logistics to the parties, attorneys, and press on December 28, 2021.

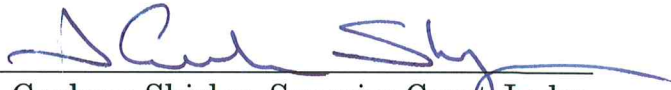
8. Objections to any of the exchanged evidence may be raised and will be heard at trial.

9. The North Carolina Rules of Civil Procedure, General Rules of Practice for the Superior and District Courts, and Local Rules of Civil Superior Court for Wake County shall govern all matters not expressly covered or superseded by this Order. The parties are reminded that if a party intends to submit any materials under seal, they are to comply with Rule 27 of the General Rules of Practice.

10. The Court may amend or supplement this Order as deemed appropriate by the Court upon its own motion or that of any party. While this Court would be willing to grant additional time for the parties to conduct discovery and present evidence, it is not within this Court's power to do so while still complying with our Supreme Court's directive to reach a full resolution on the merits of all claims in these consolidated cases. Further, although the timeline contained herein is compressed, it is similar to that of the timeline set out in N.C.G.S. § 1-521 for trial to determine the rightful holder of an office. Indeed, resolving all claims presented in these actions will require resolution of the partisan gerrymandering claims that were the subject of Plaintiffs' respective Motions for Preliminary Injunction as well as the NCLCV Plaintiffs' claims of racial gerrymandering and violations of the Whole County

Provisions in the North Carolina Constitution. To the extent they deem it necessary and feasible, the parties are at liberty to request additional time from the Supreme Court of North Carolina.

This the 13th day of December, 2021.


A. Graham Shirley, Superior Court Judge

/s/ Nathaniel J. Poovey

Nathaniel J. Poovey, Superior Court Judge

/s/ Dawn M. Layton

Dawn M. Layton, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission addressed as follows:

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Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 13th day of December 2021.



Kellie Z. Myers
Trial Court Administrator
10th Judicial District
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