

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 21 CVS 015426
No. 21 CVS 500085

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

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

***HARPER* PLAINTIFFS'
MOTION FOR
PROTECTIVE ORDER**

1. Pursuant to Rule 26(c) of the North Carolina Rules of Civil Procedure, Plaintiffs in *Harper v. Hall*, No. 21 CVS 50085, respectfully move for entry of the proposed Protective Order enclosed with this motion. There is good cause to enter the proposed Protective Order, which was entered with the agreement of all parties, including Legislative Defendants, in the 2019 *Common Cause* litigation, and which will allow the parties to designate their experts' proprietary source code as confidential when that information is disclosed on December 23 and

28 as required by this Court's scheduling order. *See* Case Scheduling Order ¶¶ 1, 4. The *NCLCV* Plaintiffs do not object to entry of the proposed Protective Order. The State Board Defendants take no position. In support of this motion, *Harper* Plaintiffs state as follows:

2. On December 13, 2021, this Court entered a scheduling order setting deadlines for, among other things, disclosure of initial and rebuttal expert reports on December 23 and December 28, respectively. The Court, consistent with Plaintiffs' proposed scheduling order, ordered that "[e]xpert reports produced to an opposing party shall be accompanied by all source code, source data, input parameters, and all outputted data." Case Scheduling Order ¶ 4. The Court's scheduling order did not incorporate language proposed by Legislative Defendants that would have required all plaintiffs, by December 13, to "submit data supporting expert reports already submitted" in connection with the plaintiffs' motions for preliminary injunctive relief. Legislative Defendants' Submission on Scheduling at 2 (Dec. 10, 2021).

3. Pursuant to the Court's scheduling order, *Harper* Plaintiffs will timely serve their expert reports by December 23, along with their experts' underlying source code and accompanying data identified in the Court's scheduling order. Some of this material, including in particular source code, is proprietary and confidential.

4. Consistent with the standard practice in litigation involving confidential information, *Harper* Plaintiffs accordingly propose entry of a Protective Order that would permit the parties to designate discovery material as confidential and thus to restrict its disclosure beyond the parties, attorneys, and other experts in this litigation. There is good cause to allow them to do so. *See* N.C.G.S. § 1A-A, Rule 26(c). Courts in North Carolina have described protective orders like the one proposed here as "essential to the efficient functioning of the discovery process" in cases involving confidential information. *See Longman v. Food Lion, Inc.*,

186 F.R.D. 331, 333 (M.D.N.C. 1999). And litigants routinely consent to such protective orders to “allow the parties to make full discovery without fear of public access to sensitive information and without the expense and delay of protracted disputes over every item of sensitive information.” *United Nuclear Corp. v. Crawford Ins. Co.*, 905 F.2d 1424, 1427 (10th Cir. 1990) (citing Manual for Complex Litigation § 24.431 (2d ed. 1985)).

5. When serving as experts in litigation, academics often treat their underlying source code and related material as proprietary and confidential until it is published. In particular, it is standard practice in certain academic fields, including quantitative political science, for academics to delay publication of the computer code and data underlying their academic research until that data is published in a peer-reviewed journal. Academics do so to ensure that they receive proper credit for the work they have done in producing their computer code and data, and in order to make sure that other academics do not attempt to publish work using their data and code before they do so themselves. Here, allowing dissemination of the source code and other data underlying the analyses of *Harper* Plaintiffs’ experts to third parties without restriction thus would cause undue hardship to *Harper* Plaintiffs’ experts.

6. *Harper* Plaintiffs’ experts in this case are employing the same methods that they have used in peer-reviewed publications. Accordingly, other versions of their source code and data, similar to the code and data used in this case, have been peer-reviewed and are publicly available for download.¹ But for obvious reasons, the specific computer code and data that *Harper* Plaintiffs’ experts have used in this particular case have not yet been published.

¹ E.g., Jowei Chen & David Cottrell, *Evaluating Partisan Gains from Congressional Gerrymandering*, 44 *Electoral Studies* 329, 329 n.* (2016), <http://websites.umich.edu/~jowei/gerrymandering.pdf>.

Disclosure of this code and data now thus would cause substantial hardship by threatening the ability of these academics to publish novel academic work based on their own code and data.

7. Recognizing the need for confidentiality, all of the parties in *Common Cause v. Lewis*, No. 18 CVS 14001—including *Legislative Defendants*—consented to the entry of a protective order in 2019 allowing the parties to designate experts’ source code and data as confidential and not subject to dissemination beyond the parties, their attorneys, and testifying or consulting experts. The court in *Common Cause* entered the parties’ proposed protective order. See Exhibit A. The plaintiffs designated their experts’ source code in that case as confidential, and *Legislative Defendants* in *Common Cause* asserted no objection to those confidentiality designations. *Legislative Defendants*’ experts were fully able to review and analyze the source code and other data relating to the analyses of the plaintiffs’ experts for all case-related purposes. And there was never any restriction of public access to deposition transcripts, court proceedings, or filings.

8. The Protective Order that *Harper* Plaintiffs propose here is *identical* to the order entered by consent of all parties in *Common Cause*. No party in *Common Cause* asserted that the designation of experts’ source code and other underlying data as confidential under the protective order caused any hardship.

9. Nevertheless, *Legislative Defendants* here have refused consent to entry of the proposed Protective Order. On December 9, after the Supreme Court granted a preliminary injunction, *Legislative Defendants* requested source code and other data underlying the reports submitted by Drs. Chen and Pegden in support of *Harper* Plaintiffs’ motion for a preliminary injunction. Although the preliminary injunction had already been granted by the time of *Legislative Defendants*’ request, Plaintiffs nonetheless advised that they would voluntarily

produce the source code and data from their experts' preliminary injunction-stage reports on the condition that Legislative Defendants consent to entry of the same protective order entered in *Common Cause*. Plaintiffs first raised this issue on a meet-and-confer call on December 9, and counsel for Legislative Defendants expressed willingness at that time to consent to a protective order. Exhibit B at 5, 7. The next day, December 10, Plaintiffs circulated the *Common Cause* protective order for all parties' review. *Id.* at 7.

10. On December 13, Legislative Defendants responded that they would not consent to entry of a protective order by the Court. They asserted for the first time, contrary to their position in the 2019 *Common Cause* litigation, that "the data underlying Plaintiffs' expert reports ... presents a matter of overriding public importance in the context of this case." Exhibit B at 5. According to Legislative Defendants, it would be "Plaintiffs' burden to procure a protective order from the Court" over Legislative Defendants' opposition. *Id.* at 6.

11. Plaintiffs asked Legislative Defendants to reconsider their position, given that the same public-importance considerations in this case were equally present in *Common Cause*, where Legislative Defendants and all other parties agreed to entry of the same Protective Order proposed here. Exhibit B at 5. Legislative Defendants declined to reconsider, and on December 14 requested that Plaintiffs immediately produce their experts' preliminary-injunction-phase source code and data, or they would seek judicial intervention. *Id.* at 2, 4. Plaintiffs explained that they intended to produce expert source code and data with their upcoming merits-stage expert reports, as required under this Court's scheduling order, and that they remained willing to share the preliminary injunction-stage source code and data upon entry of a protective order. *Id.* at 1. Plaintiffs further explained that, in light of Legislative Defendants' opposition to a

protective order, Plaintiffs would seek entry of a protective order to ensure the protection of code and data to be disclosed with the production of Plaintiffs' merits-stage expert reports. *Id.* at 1.

12. Yesterday evening, Legislative Defendants filed a motion to compel the immediate production of Plaintiffs' experts' preliminary-injunction-stage source code and data. Plaintiffs are separately responding to that motion today. But, in short, there is nothing to "compel." This Court's scheduling order did not direct all plaintiffs to "submit data supporting expert reports already submitted," as Legislative Defendants had proposed. Legislative Defendants' Submission on Scheduling at 2 (Dec. 10, 2021). Nor have Legislative Defendants identified any rule that would entitle them to source code and data associated with expert reports that Plaintiffs are not planning to introduce as evidence during the merits phase of this case. Instead, this Court's scheduling order requires the production of expert source code and data *with* merits-stage expert reports, which are not due until December 23 and 28. Case Scheduling Order ¶¶ 1, 4. As Plaintiffs have told Legislative Defendants, they will be producing all required source code and data on those dates. And Plaintiffs have explained that they remain willing to voluntarily produce their experts' preliminary-injunction-stage source code data—even though it is not required by the scheduling order or the rules—promptly upon entry of the protective order.

13. Legislative Defendants' motion to compel also rests on a misunderstanding of the rights of public access to judicial proceedings. Mot. to Compel at 7-15. The Protective Order here would restrict dissemination of computer code and data designated as confidential and produced to parties in this case through *discovery*. It would not, as Legislative Defendants suggest, "entail sealing portions of deposition transcripts, closing parts of the trial," or "sealing exhibits." Mot. to Compel at 15. As Legislative Defendants know, none of those things happened in *Common Cause* despite entry of the exact same protective order. Nor do they

happen in countless other cases where parties consent to entry of routine protective orders providing for the protection of confidential information produced in discovery.

14. As a result, there is no public-access issue. It is black-letter law that when “a protective order is entered on a showing of good cause as required by Rule 26(c), is limited to the context of pretrial civil discovery, and does not restrict the dissemination of the information if gained from other sources, it does not offend the First Amendment.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 37 (1984); *see also, e.g., United States v. Aguilar*, 515 U.S. 593, 606 (1995) (“protective orders may be imposed in connection with information acquired through civil discovery without violating the First Amendment”). The cases cited by Legislative Defendants involved restrictions *not* on dissemination of discovery materials—which raise no First Amendment issue—but on restrictions of access to court proceedings and judicial records, like “briefing and exhibits filed in connection with motions seeking injunctive relief.” *Bayer Cropscience Inc. v. Syngenta Crop Prot., LLC*, 979 F. Supp. 2d 653, 656 (M.D.N.C. 2013); *see Mot. to Compel* at 9-10. Those cases are irrelevant here. Source code and underlying data are not being submitted to the Court as evidence in their original, proprietary form. And it is well-established that “[d]ocuments merely exchanged as part of discovery, and which have not been attached to any dispositive motions, are not ‘judicial records’.” *United States v. Johnson*, No. 12-CV-1349, 2014 WL 12787211, at *2 (M.D.N.C. Feb. 10, 2014).

15. Moreover, under the Protective Order itself, Legislative Defendants would remain free to challenge particular confidentiality designations if they believe them to be improper. *See* Protective Order ¶ 7(e). Defendants’ experts and counsel would remain free to examine any of Plaintiffs’ experts’ code and data designated as confidential, and to use that information in

attempting to critique the analysis of Plaintiffs’ experts—just like in *Common Cause*. And any rebuttal reports or witness testimony relying on the code and data would remain public.

16. Legislative Defendants assert that the presence of a Protective Order will deter experts from “examin[ing] source code” because of concerns about infringing a non-disclosure agreement. Mot. to Compel at 15. But in the 2019 *Common Cause* litigation, Legislative Defendants put on *five* expert witnesses specifically to critique Plaintiffs’ experts, none of whom apparently took issue with the confidentiality requirements the parties had agreed to. And regardless, Legislative Defendants get the “chilling” concerns backwards. Academics should not be required to irrevocably cede control of their proprietary code and data just to serve as an expert in litigation. That is why entry of protective orders is standard practice in cases like this.

17. In short, entry of the proposed Protective Order is entirely consistent with the “public importance” of the experts’ analyses—a concern equally present in the 2019 *Common Cause* litigation and in the countless other cases where parties have stipulated to routine entry of protective orders like this one. This Protective Order simply allows the parties to protect the underlying confidential information itself from unnecessary, burdensome distribution.

18. For the foregoing reasons, Plaintiffs’ motion for entry of the enclosed Protective Order should be granted to protect code and other confidential material shared from the preliminary injunction-stage reports and the reports to be produced on December 23. And at that point, Plaintiffs will immediately produce to Legislative Defendants and all other parties their experts’ preliminary-injunction-stage source code and data.

Respectfully submitted, this the 15th day of December, 2021.

By: /s/ Narendra K. Ghosh

PATTERSON HARKAVY LLP

Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Harper Plaintiffs

ELIAS LAW GROUP LLP

Lalitha D. Madduri*
Jacob D. Shelly*
Graham W. White
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

Abha Khanna*
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
AKhanna@elias.law

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

Elisabeth S. Theodore
R. Stanton Jones*
Samuel F. Callahan
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
elisabeth.theodore@arnoldporter.com

Counsel for Harper Plaintiffs

**Pro hac vice motion pending*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to the following counsel for defendants:

Amar Majmundar
Stephanie A. Brennan
Terence Steed
NC Department of Justice
P.O. Box 629
Raleigh, NC 27602
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
tsteed@ncdoj.gov

*Counsel for the State Board of Elections and
its members*

Phillip J. Strach
Alyssa Riggins
John E. Branch, III
Thomas A. Farr
Nelson Mullins Riley & Scarborough LLP
4140 Parklake Ave., Suite 200
Raleigh, NC 27612
phil.strach@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
john.branch@nelsonmullins.com
tom.farr@nelsonmullins.com

Counsel for the Legislative Defendants

This the 15th day of December, 2021.

/s/ Narendra K. Ghosh

Narendra K. Ghosh

Exhibit A

NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18-CVS-14001

WAKE COUNTY

2019 APR -5 PM 1:40

COMMON CAUSE, et al.,

WAKE CO., C.S.C.

Plaintiffs,

v.

DAVID LEWIS, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIRMAN OF
THE HOUSE SELECT COMMITTEE ON
REDISTRICTING, et al.,

Defendants.

CONSENT PROTECTIVE ORDER

THIS MATTER COMING BEFORE THE COURT upon the consent of the parties to enter a protective order governing the production of certain materials in connection with this matter, and the parties appearing to have consented to the terms thereto, the Court enters the following protective order.

1. This Agreement shall govern the production and exchange of the Parties' documents, and any testimony relating to such documents, that reflect the Parties' confidential information, specifically including answers to requests for admission, answers to interrogatories, responses to requests for production of documents and documents produced in accordance therewith, documents subpoenaed, and any deposition transcript or portion thereof as to which protection is sought in accordance with this Agreement. In addition, the terms of this Agreement shall apply to all manner and means of discovery, including entry onto land or premises, and inspection of books, records, documents, and tangible things. To fall within the scope of this Agreement, all such Confidential material shall be designated as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS' EYES ONLY," by the Party producing the material. References to "Confidential" material in this Agreement include material marked

“CONFIDENTIAL” and “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY.”

2. As a general guideline, “CONFIDENTIAL” information shall be those things that may be disclosed to the Plaintiffs and Defendants for the purposes of the litigation, but which must be protected against disclosure to third parties. Absent a specific order by the Court, once designated as “CONFIDENTIAL,” such information shall be used by the Parties solely in connection with this litigation, and not for any political, business, commercial, competitive, personal, governmental, or other purpose or function whatsoever, and such information shall not be disclosed to anyone except as provided herein. The producing Party may designate as “CONFIDENTIAL” any material that it produces in the litigation which it believes constitutes, contains, reflects, or discloses confidential, non-public trade secrets, competitively sensitive or proprietary information, research and analysis, development or commercial information, or other information for which a good faith claim of need of protection from disclosure can be made.

3. As a general guideline, “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” information shall be those things that may be disclosed only to outside attorneys of the receiving party who are not also employees of the receiving party. Absent a specific order by the Court, once designated as “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY,” such information shall be used by the Parties solely in connection with this litigation, and not for any political, business, commercial, competitive, personal, governmental, or other purpose or function whatsoever, and such information shall not be disclosed to anyone except as provided herein. The producing Party may designate as “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” (a) any non-public personal information or (b) any CONFIDENTIAL material that the producing Party reasonably and in good faith believes to be

extremely sensitive confidential and/or proprietary information, disclosure of which to a Party or another non-party would create a substantial risk of significant competitive or business injury.

4. All “CONFIDENTIAL” and “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” information and material covered by this Agreement shall be kept in secure facilities, and access to those facilities shall be permitted only to those designated persons as provided herein. However, information may be kept in the law offices of the respective counsel without additional security measures beyond those typically accorded client files.

5. All counsel for the Parties who have access to information or material designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” under this Agreement acknowledge that they are bound by this Agreement and submit to the jurisdiction of this Court for the purposes of enforcing this Agreement.

6. No designated confidential material shall be reproduced except as required in connection with the litigation of this case. Any person making, or causing to be made, photocopies, excerpts, blow-ups, or demonstrative material reflecting any designated confidential material (such as charts or diagrams) shall make certain that each such item bears the appropriate “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” marking. All copies, extracts, or summaries prepared from designated confidential materials produced hereunder shall be subject to the same terms of this Agreement as the designated confidential material from which such copies, extracts, or summaries were prepared.

7. Entering into, agreeing to, and/or producing or receiving information or material designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” in compliance with the terms of this Agreement shall not:

- a. Operate as an admission by any Party that any particular information or material designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” contains or reflects trade secrets, proprietary or commercially-sensitive information, or any other type of confidential information;
 - b. Operate as an admission by any Party that the restrictions and procedures set forth herein constitute or do not constitute adequate protection for any particular information deemed by any Party to be “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY”;
 - c. Prejudice in any way the rights of any Party to object to the production of documents it considers not subject to discovery;
 - d. Prejudice in any way the rights of any Party to object to the authenticity or admissibility into evidence of any document, testimony, or other evidence subject to this Agreement;
 - e. Prejudice in any way the rights of any Party to seek a determination by the Court whether any information or material should be subject to the terms of this Agreement;
 - f. Prejudice in any way the rights of any Party to petition the Court for a further protective order relating to any purportedly confidential information; and
 - g. Prevent the Parties to this Agreement from agreeing in writing or on the record during a deposition or hearing in this action to alter or waive the provisions or protections provided herein with respect to any particular information or material.
8. This Agreement has no effect upon, and shall not apply to, a Party’s use or disclosure of its own confidential information or the disclosure of a Party’s information to the

Party or the Party's employees for any purpose. Nothing contained herein shall impose any restrictions on the use or disclosure by a Party of documents, information, or material designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS' EYES ONLY" obtained lawfully by such Party independently of any proceedings in this action, or which:

- a. Was already known to such Party by lawful means prior to acquisition from, or disclosure by, any other Party in this action;
- b. Is or becomes publicly known through no fault or act of such Party; or
- c. Is rightfully received by such Party from a third Party which has authority to provide such information or material and without restriction as to disclosure.

9. For purposes of this Agreement, the word "document(s)" shall have the same meaning ascribed to the word "document" in Rule 34 of the North Carolina Rules of Civil Procedure.

10. Information and documents containing information subject to this Agreement may be used as exhibits or otherwise during depositions and trial in this litigation. Any non-party witness shown Confidential information during a deposition, hearing, or trial in this litigation shall, prior to being shown the Confidential information, be asked to state under oath on the record, or shall execute an affidavit or declaration in the form attached as Exhibit A, that he or she has agreed to be bound by this Agreement.

11. Information or material designated as "CONFIDENTIAL" may be disclosed, summarized, or otherwise made available in whole or in part only to the following persons:

- a. counsel of record for the Parties and regular and temporary employees of such counsel to whom it is necessary that the information or material be shown for the purposes of this litigation;
- b. Plaintiffs, Defendants, and employees of the Plaintiffs or Defendants;
- c. consulting or testifying experts retained for purposes of this litigation, who have signed a document in the form attached as Exhibit A to this Order;
- d. the Court;
- e. court reporters employed in connection with this action;
- f. any other person only upon order of the Court or upon prior written consent of the Party producing the confidential information or material.

12. Information or material designated as “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” may be disclosed, summarized, or otherwise made available in whole or in part only to the following persons:

- a. outside counsel of record for the Parties and regular and temporary employees of such outside counsel to whom it is necessary that the information or material be shown for the purposes of this litigation, but not including any employee of a Party to this litigation;
- b. the Court;
- c. court reporters employed in connection with this action;
- d. any other person only upon order of the Court or upon prior written consent of the Party producing the confidential information or material.

13. The terms of this order are applicable to information produced by a non-Party in the litigation and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/OUTSIDE

ATTORNEYS' EYES ONLY," as applicable. Such information produced by non-Parties in connection with this litigation is protected by the remedies and relief provided by this Agreement. Nothing in these provisions should be construed as prohibiting a non-Party from seeking additional protections.

14. Nothing in this Agreement shall prevent any Party from producing any document or information in its possession in response to a lawful subpoena or other compulsory process, provided that prompt notice of the subpoena or compulsory process shall be given to the Party or who produced the information in this litigation. That notice shall be given prior to the date that the Party subpoenaed is required to respond to the subpoena or other compulsory process in which materials designated confidential are sought. A Party who receives a lawful subpoena or other compulsory process will cooperate with respect to all reasonable procedures sought to be pursued by the producing party whose "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS' EYES ONLY" information may be affected.

15. Inadvertent failure to designate material as Confidential material at the time of production may be remedied by supplemental written notice. Once such notice is received, all documents, material, or testimony so designated shall be treated as if they had been initially designated as Confidential material. Notwithstanding such notice, if prior to receipt of the notice, Confidential material has been disclosed or used in a manner inconsistent with the provisions of this Agreement, it shall be deemed a limited disclosure which shall not be considered a violation of this Agreement. Upon receipt of such notice, the designated material shall thereafter be considered subject to this Agreement.

16. The provisions of this Agreement shall remain in full force and effect following the conclusion of this litigation until or unless this Agreement is modified or vacated by the Court, or upon written consent of counsel for the Parties.

17. Within sixty (60) days after the conclusion of this litigation (whether by settlement, dismissal or final judgment, after any appeals are concluded or the time for further appeal has expired) all originals and reproductions of Confidential material subject to this Agreement shall be destroyed by the receiving party's counsel or returned to the producing party. Counsel for the receiving party shall certify to counsel for the producing party within said sixty (60) day time period that such destruction or return has taken place. Notwithstanding this provision, counsel are entitled to retain archival copies of all draft and final pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Confidential material subject to this Agreement. Any such archival copies that contain or constitute Confidential material subject to this Agreement will remain subject to this Agreement, including the restrictions on disclosure therein.

18. The Parties agree to be bound by the terms of this Order until such time as the Court rules thereon, and thereafter, the Parties will be bound by the ruling of the Court.

SO ORDERED.

This the 5th day of April, 2019.

/s/ Paul C. Ridgeway

Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite

Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton

Alma L. Hinton, Superior Court Judge

WE CONSENT:

POYNER SPRUILL LLP

By: _____

Edwin M. Speas, Jr.
N.C. State Bar No. 4112
Caroline P. Mackie
N.C. State Bar No. 41512
P.O. Box 1801
Raleigh, NC 27602-1801
(919) 783-6400
espeas@poynerspruill.com

*Counsel for Common Cause, the
North Carolina Democratic Party,
and the Individual Plaintiffs*

**ARNOLD & PORTER
KAYE SCHOLER LLP**

By: _____

R. Stanton Jones*
David P. Gersch*
Elisabeth S. Theodore*
Daniel F. Jacobson*
601 Massachusetts Ave. NW
Washington, DC 20001-3743
(202) 942-5000
stanton.jones@arnoldporter.com

PERKINS COIE LLP

By: _____

Marc E. Elias*
Aria C. Branch*
700 13th Street NW
Washington, DC 20005-3960
(202) 654-6200
melias@perkinscoie.com

Abha Khanna*
1201 Third Avenue
Suite 4900
Seattle, WA 98101-3099
(206) 359-8000
akhanna@perkinscoie.com

*Counsel for Common Cause and the
Individual Plaintiffs*

**Admitted Pro hac vice*

BAKER & HOSTETLER, LLP

By: _____

E. Mark Braden* (DC Bar No. 419915)
Richard B. Raile* (Va. Bar No. 84340)
Trevor M. Stanley* (Va. Bar No. 77351)
1050 Connecticut Ave Suite 1100
Washington, DC, 20036
rraile@bakerlaw.com
mbraden@bakerlaw.com
tstanley@bakerlaw.com
Telephone: (202) 861-1500
Facsimile: (202) 861-1783

**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.**

By: _____

Phillip J. Strach (N.C. Bar # No. 29456)
Michael D. McKnight (N.C. Bar # No. 36932)
4208 Six Forks Road, Suite 1100
Raleigh, North Carolina 27609
phil.strach@ogletreedeakins.com
michael.mcknight@ogletreedeakins.com
Telephone: (919) 787-9700
Facsimile: (919) 783-9412

Counsel for Legislative Defendants

SHANAHAN MCDOUGAL PLLC

By: _____

John E. Branch, III
H. Denton Worrell
Nathaniel J. Pencook
128 E. Hargett Street, Suite 300
Raleigh, NC 27601
jbranch@shanahanmcdougal.com
dworrell@shanahanmcdougal.com
npencook@shanahanmcdougal.com

Counsel for Defendant-Intervenors

**NORTH CAROLINA DEPARTMENT
OF JUSTICE**

By: _____

Amar Majmundar (N.C. Bar No. 24668)
Senior Deputy Attorney General
Stephanie A. Brennan (N.C. Bar No. 35955)
Special Deputy Attorney General
North Carolina Dept. of Justice
P.O. Box 629
Raleigh, NC 27602
Email: sbrennan@ncdoj.gov
Tele No.: (919) 716-6920
Fax No.: (919) 716-6763

Counsel for State Defendants

EXHIBIT A

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

WAKE COUNTY

SUPERIOR COURT DIVISION

18-CVS-14001

COMMON CAUSE, et al.,

Plaintiffs,

v.

DAVID LEWIS, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIRMAN OF
THE HOUSE SELECT COMMITTEE ON
REDISTRICTING, et al.,

Defendants.

AFFIDAVIT OF CONFIDENTIALITY

I hereby acknowledge that I am about to receive information designated as “Confidential” supplied in connection with the above-referenced litigation. I have received and read a copy of the Consent Protective Order entered in this case.

I understand and agree to be bound by the terms of the Consent Protective Order, and I agree not to disclose or use this information except in accordance with the terms of the Consent Protective Order. I will not copy or use the Confidential Information I am about to receive except for purposes of this litigation unless such information is or becomes public information in accordance with the terms of the Consent Protective Order.

I understand and agree that the information designated as “Confidential” may only be used for purposes of this litigation only and for no other business,

I further agree to submit to the jurisdiction of the Court and understand that the Court may impose sanctions for any intentional violation of the Consent Protective Order.

I further agree that, upon termination of this litigation, or sooner if so requested, I will return to counsel all Confidential Information provided to me, including any copies and excerpts of such Confidential Information.

I understand that I am permitted to retain copies of my own work product provided that such materials are maintained and protected in accordance with the terms of the Consent Protective Order.

I understand that failure to abide by the terms of the Consent Protective Order may result in legal action against me.

Dated: _____

By: _____

Name: _____

Address: _____

Title: _____

Present Occupation or Job Description:

Employer: _____

Sworn to before me and subscribed in my presence this ___ day of _____, 20__.

Notary Public

Certificate of Service

The undersigned certifies that the foregoing was served upon all parties by electronic mail, addressed as follows:

Edwin M. Speas, Jr.
Caroline P. Mackie
Poyner Spruill LLP
espeas@poynerspruill.com
cmackie@poynerspruill.com
*Counsel for Common Cause,
The North Carolina Democratic Party
And the Individual Plaintiffs*

R. Stanton Jones
David P. Gersch
Elisabeth S. Theodore
Daniel F. Jacobson
Arnold & Porter Kaye Scholer, LLP
Stanton.jones@arnoldporter.com
David.gersch@arnoldporter.com
Elisabeth.theodore@arnoldporter.com
Daniel.jacobson@arnoldporter.com
*Counsel for Common Cause
And for Individual Plaintiffs*

Mark E. Braden
Richard Raile
Trevor Stanley
Baker & Hostetler, LLP
rraile@bakerlaw.com
mbraden@bakerlaw.com
tstanley@bakerlaw.com
Attorneys for Legislative Defendants

Marc E. Elias
Aria C. Branch
Perkins Coie, LLP
melias@perkinscoie.com
ABranch@perkinscoie.com
*Counsel for Common Cause
And the Individual Plaintiffs*

Abha Khanna
Perkins Coie, LLP
akhanna@perkinscoie.com
*Counsel for Common Cause
And the individual Plaintiffs*

Phillip J. Strach
Michael McKnight
Alyssa Riggins
Ogletree, Deakins et al.
Phillip.strach@ogletree.com
Michael.mcknight@ogletree.com
Alyssa.riggins@ogletree.com
Counsel for Legislative Defendants

Stephanie A. Brennan
Amar Majmundar
Paul Cox
NC Department of Justice
sbrennan@ncdoj.gov
amajmundar@ncdoj.gov
pcox@ncdoj.gov
*Counsel for the State of North
Carolina and members of the State
Board of Elections*

Josh Lawson
NC State Board of Elections
joshua.lawson@ncsbe.gov
Counsel for the State Board of Elections

John E. Branch, III
H. Denton Worrell
Nathaniel J. Pencook
Shanahan McDougal, PLLC
jbranch@shanahanmcdougal.com
dworrellshanahanmcdougal.com
npencook@shanahanmcdougal.com
Attorneys for Defendant-Intervenors

This the 5th day of April, 2019.



Kellie Z. Myers
Trial Court Administrator
10th Judicial District
Kellie.Z.Myers@nccourts.org

Exhibit B

Callahan, Sam

From: Theodore, Elisabeth
Sent: Tuesday, December 14, 2021 12:21 PM
To: 'McKnight, Katherine L.'; 'Alyssa Riggins'; 'Feldman, Stephen'
Cc: 'Phil Strach'; 'Tom Farr'; 'John Branch'; Braden, E. Mark; Raile, Richard; 'Brennan, Stephanie'; 'Majmundar, Amar'; 'tsteed@ncdoj.gov'; 'Burton Craige'; 'Narendra Ghosh'; 'Paul Smith'; 'melias@elias.law'; 'abranche@elias.law'; zzz.External.lmadduri@elias.law; zzz.External.jshelly@elias.law; zzz.External.gwhite@elias.law; zzz.External.akhanna@elias.law; Jones, Stanton; Callahan, Sam; 'Doerr, Adam'; 'Zimmerman, Erik'; 'Hirsch, Sam'; 'Amunson, Jessica Ring'; 'Kali Bracey'; 'Schauf, Zachary C.'; 'Mittal, Urja R.'
Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production

Kate:

Thank you very much for sending the incumbent addresses.

We understood the Court's order from yesterday to require us to produce expert materials with the reports on the 23rd. We will certainly honor our agreement — which was to voluntarily produce PI-related materials earlier *if* you agree to a protective order — but you told us yesterday that you wouldn't agree and would oppose such an order, which is why we didn't produce them yesterday. We have not changed our position, but we do not plan to voluntarily produce source code and other materials relating to PI-stage reports if there is any risk that those materials won't be subject to a protective order.

We intend to move the court, as early as today, for entry of the same protective order to which the parties agreed (and that the panel entered) in Common Cause. We did not understand your addition, which appears to allow parties to unilaterally designate as confidential information that has nothing to do with them and in which they have no protectable interest.

Of course, you retain the right to oppose entry of the order. If you oppose and the Court declines to enter our proposed protective order, we will produce all the expert materials that the Court's scheduling order requires us to produce, but we won't plan to voluntarily produce extra materials such as the PI materials absent a protective order.

Thanks,
Elisabeth

From: McKnight, Katherine L. <kmcknight@bakerlaw.com>
Sent: Tuesday, December 14, 2021 9:57 AM
To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>
Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bCraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranche@elias.law' <abranche@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik'

<EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production

External E-mail

Thanks for your e-mail, Elisabeth. Last Thursday we asked for Plaintiffs' source code data for Plaintiffs' PI expert reports and were told that Harper Plaintiffs would produce it with a protective order. We asked that it be produced by yesterday and Harper Plaintiffs agreed. Yesterday morning, we agreed to Plaintiffs' protective order with minor revision, and the requirement that Harper Plaintiffs seek a Court-ordered protective order after production, but Harper Plaintiffs have not yet produced their experts' PI source code. We ask for the courtesy of notice if Harper Plaintiffs have changed their position and no longer intend to produce their experts' PI source code. If we do not hear from you by 2pm today, we will need to seek Court assistance in resolving this dispute.

Zach, for NCLCV Plaintiffs, we understood you were waiting to see the Court's scheduling order to produce. Now that you have the scheduling order and see the Court's requirement for the production of expert source code, will you agree to produce Dr. Duchin's PI source code today? We ask that you confirm NCLCV Plaintiffs' position on producing Dr. Duchin's PI source code by 2pm today. We hope to come to an agreement on this issue but may need to seek Court assistance in resolving this dispute.

As for incumbent addresses, unlike Harper Plaintiffs' agreement to produce information by yesterday, we never promised production by Monday. We received Harper Plaintiffs' written request on Friday afternoon and relayed it that afternoon to Central Staff in the General Assembly. It bears noting that Central Staff are non-partisan staff of the legislative body. Central Staff let us know yesterday morning that your Friday afternoon request would be fulfilled within a few hours and we relayed that information to you noting that this was our belief of timing but that we could not estimate with further certainty. Regardless, attached please find the incumbent address list.

We look forward to your responses.

Kate

Katherine L. McKnight

Partner

BakerHostetler

Washington Square
1050 Connecticut Ave, N.W. | Suite 1100
Washington, DC 20036-5403
T +1.202.861.1618

kmcknight@bakerlaw.com

bakerlaw.com



From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Sent: Monday, December 13, 2021 11:59 PM

To: McKnight, Katherine L. <kmcknight@bakerlaw.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>

Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard

<rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcairage@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; Imadduri@elias.law; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production

Kate:

Thanks for your response. We too hope to avoid motion practice on the issue of the incumbent addresses, but it has now been 10 hours since you advised us that you hoped to send the addresses in "a few hours," and 4 days since we requested these addresses. As you know, these addresses are essential to our expert analysis, and time is short. Please see the attached first set of interrogatories from the Harper plaintiffs to the legislative defendants, which formally request the incumbent addresses by 3pm tomorrow. We will move at that time if we do not hear from you sooner.

I note that we know that this information has already been compiled by the General Assembly based on public documents. The StatPack for the enacted Senate plan (https://www.ncleg.gov/Files/GIS/Plans_Main/Senate_2021/SL%202021-173%20Senate%20-%20StatPack%20Report.pdf) contains an "Incumbent District Report" analysis based on a file entitled "Residence Set: NC Senate - 9/20/2021." The StatPack for the enacted House plan (https://www.ncleg.gov/Files/GIS/Plans_Main/House_2021/SL%202021-175%20House%20-%20StatPack%20Report.pdf) contains an "Incumbent District Report" analysis based on a file entitled "Residence Set: NC House - 10/01/2021." And the StatPack for the congressional plan (https://www.ncleg.gov/Files/GIS/Plans_Main/Congress_2021/SL%202021-174%20Congress%20-%20StatPack%20Report.pdf) contains an "Incumbent District Report" analysis based on a file entitled "Residence Set: Congress - 9/22/2021."

Thanks,
Elisabeth

Thank you,
Elisabeth

From: McKnight, Katherine L. <kmcknight@bakerlaw.com>

Sent: Monday, December 13, 2021 1:58 PM

To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>

Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcairage@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; zzz.External.Imadduri@elias.law <Imadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal,

Urja R.' <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production

External E-mail

Thanks for your e-mails, Elisabeth and Zach.

Legislative Defendants cannot agree to a protective order other than under the arrangement described below. Do Plaintiffs need an additional day or two to file a motion for protective order? We can work with Plaintiffs on that point.

Elisabeth, thank you for working to accommodate our request for backup material today. If the Court allows Plaintiffs to amend their expert reports, which, to be clear, we do not think is appropriate, we would expect to receive backup materials for those amended reports on the same date as those reports are served.

On incumbent addresses, I believe we will be able to send those in a few hours but I cannot estimate with any more certainty. Unfortunately, such a list is not "readily available," as I understand, for the very reason you anticipated; we are trying to gather in list form all residential addresses as opposed to a list that includes P.O. box numbers and the like. Plaintiffs appear ready to "force the parties to engage in contested briefing" but we can assure you there is no dispute on these addresses. We are just waiting for them to be collected and put into list form for production.

Kate

Katherine L. McKnight

Partner

BakerHostetler

Washington Square
1050 Connecticut Ave, N.W. | Suite 1100
Washington, DC 20036-5403
T +1.202.861.1618

kmcknight@bakerlaw.com
bakerlaw.com



From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Sent: Monday, December 13, 2021 12:04 PM

To: McKnight, Katherine L. <kmcknight@bakerlaw.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>

Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; Imadduri@elias.law; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production

Kate:

As you know, the Legislative Defendants agreed to the exact same protective order covering the exact same source code material in the *Common Cause* litigation, which was also litigation of “overriding public importance.” And when we raised the protective order issue on Thursday during our meet and confer in response to your request for our expert materials at the PI stage, Phil said that a protective order wouldn’t be a problem. It is standard practice to enter into protective orders covering source code, and this protective order allows you and your experts full access to and use of all relevant information for any case-related purpose. If you have any concerns about the content of the protective order, we would be happy to discuss.

We are trying to accommodate your request to receive this source code and other backup material as quickly as possible, even though the materials you’ve requested relate to PI stage reports after the PI has already been granted. Given the extreme time constraints under which we are all working, we cannot understand why you would force the parties to engage in contested briefing about a protective order that you previously agreed to in materially identical litigation. Please let us know if you will reconsider. We are happy to discuss on the phone.

Also, please let us know **what time today** you will be able to send the incumbent addresses, which we asked for on Thursday and which we are indisputably entitled to. We know from the *Common Cause* litigation that this information is readily available to the legislative leaders, and this information was also used to generate the “Statpacks” that are available on the General Assembly’s website. It is critical that we receive this information now for our opening expert reports. If we do not hear from you by 5pm, we will seek relief from the Court, as we did in *Common Cause*.

Best,
Elisabeth

From: McKnight, Katherine L. <kmcknight@bakerlaw.com>
Sent: Monday, December 13, 2021 8:23 AM
To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>
Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bCraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>
Subject: NCLCV v Hall (21 CVS 15426) -- source code production

External E-mail

Dear Elisabeth,

Thank you for your e-mail below. Regarding the discussion below about a protective order, we believe the data underlying Plaintiffs’ expert reports—including the source code, the data fed into the code, and the output—presents a matter of overriding public importance in the context of this case. We therefore cannot agree to a protective order and

submit that it is Plaintiffs' obligation to disclose the data supporting their expert analysis, and Plaintiffs' burden to procure a protective order from the Court.

We are all working on an incredibly condensed schedule and propose the following solution:

1. Without waiving their position, Legislative Defendants are amenable to agreeing to the attached version of the protective order (see attached redline proposing edit to substance of the Order) pending resolution of Plaintiffs' motion for protective order so that Plaintiffs may produce today what we requested, namely:
 - a. "copies of the source code, source data, input parameters (i.e., the exact model specifications and input parameters given to the computer programs to perform the simulations analysis), and all data outputted from those simulations (including reporting as well as shapefiles or block-assignment files for the simulated plans) for the analyses that formed the basis for the expert reports of Drs. Chen and Pegden in the Harper case. We also request the data and model parameters underlying Dr. Duchin's expert report in the NCLCV matter. Finally, we request the source code, source data, input parameters (as defined above), and output data (as defined above) used to generate the three "Optimized" Maps/Plans that the NCLCV Plaintiffs asked Dr. Duchin to assess and that they produced to the Court." (Request dated Thursday, Dec. 9.)
2. Plaintiffs agree to file a motion for protective order by Wednesday, December 15, 2021, at 5pm and Legislative Defendants will file their opposition brief by Friday, December 17, 2021, at 5pm. If Plaintiffs fail to file a motion for protective order by that date, Legislative Defendants will understand that Plaintiffs have waived any protective interest in the material and the agreed protective order will no longer bind the parties.
3. If the Court denies Plaintiffs' motion for protective order, then the agreed protective order will no longer bind the parties.
4. If the Court grants Plaintiffs' motion for protective order, then the agreed protective order will continue to bind the parties.

For NCLCV counsel, we do not know where NCLCV Plaintiffs stand in this discussion (and pardon me if I missed an e-mail) but if you believe Dr. Duchin's materials require a protective order we suggest the same framework for resolution.

Finally, we understand your request regarding incumbent addresses and are working to gather residential addresses for incumbents. We hope to update you later today as to status.

We are happy to join a call today if that would aid in resolving this issue.

Thank you all,

Kate

Katherine L. McKnight

Partner

BakerHostetler

Washington Square
1050 Connecticut Ave, N.W. | Suite 1100
Washington, DC 20036-5403
T +1.202.861.1618

kmcknight@bakerlaw.com
bakerlaw.com



From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Friday, December 10, 2021 1:13 PM
To: 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>
Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; McKnight, Katherine L. <kmcknight@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranche@elias.law' <abranche@elias.law>; Imadduri@elias.law; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

[External Email: Use caution when clicking on links or opening attachments.]

Dear all:

Two updates from the Harper plaintiffs. First, in response to Kate's email yesterday requesting source code, the Harper Plaintiffs are happy to provide source code, inputs, and outputs from Dr. Chen and Dr. Pegden on Monday, on two conditions. First, will Defendants agree to enter into the attached protective order that we all agreed on in Common Cause? We'll update it for this case. Second, will defendants provide, by Monday, a list of the incumbent addresses for both congressional and state legislative districts that the Legislative Defendants used in drawing the maps? Consistent with the experience in the Common Cause case, we will need their home addresses, not P.O. boxes or office addresses. I should note that we do intend to serve updated expert reports, but we are nonetheless happy to send you on Monday the code from the versions we served with the preliminary injunction motion.

Second, on further consideration, we'd like to propose two days for expert video depositions, with a 4 hour cap (including 1 hour for direct) for each expert. We would submit the videos (or excerpts) to the judges.

Given that the deadline is today, please let us know your thoughts on scheduling. We are happy to jump on the phone again.

Best,
Elisabeth

From: Theodore, Elisabeth
Sent: Thursday, December 9, 2021 5:19 PM
To: 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; Feldman, Stephen <SFeldman@robinsonbradshaw.com>
Cc: Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranche@elias.law' <abranche@elias.law>; zzz.External.Imadduri@elias.law