

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF WAKE

FILE NO. 21 CVS 015426

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.

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BY _____

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF WAKE

FILE NO. 21 CVS 500085

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.

ORDER ON COMMON CAUSE MOTION TO INTERVENE

THIS MATTER comes before the undersigned Three-Judge Panel upon the Motion to Intervene filed by Intervenor-Applicant Common Cause, pursuant to Rule 24 of the

North Carolina Rules of Civil Procedure. Intervenor-Applicant desires to intervene as plaintiffs in these consolidated cases.

Procedural History

In this litigation, NCLCV Plaintiffs and Harper Plaintiffs [hereinafter collectively referred to as “Plaintiffs”] seek a judgment declaring as unconstitutional and invalid the North Carolina congressional districts, North Carolina Senate districts, and North Carolina House districts established, respectively, by acts of our General Assembly in N.C. Sess. Laws 2021-174 (S.L. 2021-174), N.C. Sess. Laws 2021-173 (S.L. 2021-173), and N.C. Sess. Laws 2021-174 (S.L. 2021-175) (collectively, the “Enacted Plans”). Plaintiffs also seek to enjoin Defendants, their agents, officers, and employees from preparing for, administering, or conducting any election under the Enacted Plans.

NCLCV Plaintiffs (Civil Action No. 21 CVS 015426) filed their Complaint contemporaneously with a Motion for Preliminary Injunction pursuant to North Carolina Rules of Civil Procedure 7(b) and 65 on November 16, 2021. NCLCV Plaintiffs challenge the Enacted Plans 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, challenging the congressional districts on partisan gerrymandering grounds. Harper Plaintiffs amended their Complaint on December 13, 2021, and the Harper Plaintiffs’ operative Complaint now challenges on partisan gerrymandering grounds the Enacted Plans.

On November 19, 2021 and November 22, 2021, the NCLCV and Harper actions were transferred to the undersigned three-judge panel of Superior Court, Wake County, pursuant to N.C.G.S. § 1-267.1 and N.C.G.S. § 1A-1, Rule 42(b)(4), respectively.

On December 3, 2021, the undersigned consolidated the NCLCV and Harper matters pursuant to Rule 42 of the North Carolina Rules of Civil Procedure. On December 3, 2021, the undersigned denied Plaintiffs' Motions for Preliminary Injunction, and on that same date Plaintiffs filed a notice of appeal.

On December 8, 2021, on Plaintiffs' Petitions for Discretionary Review Prior to Determination by the Court of Appeals, 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 the trial court to hold proceedings on the merits of Plaintiffs' claims and provide written ruling by January 11, 2022.

On November 30, 2021, in a separate action, *NC NAACP v. Berger* (Civil Action No. 21 CVS 14476), the trial court denied the Motion for Preliminary Injunction filed by Common Cause, along with other plaintiffs, and granted Legislative Defendant's Motion to Dismiss. On December 6, 2021, plaintiffs in that action filed a Notice of Appeal. On December 8, 2021, the Supreme Court of North Carolina issued an Order that held the following:

Pursuant to Rule 15 of the North Carolina Rules of Appellate Procedure, the Petition for Discretionary Review is dismissed ex mero motu without prejudice to the plaintiffs-petitioners' right to seek leave from the Superior Court to intervene in the trial court proceeding in the consolidated cases of *Harper v. Hall . . .* and *North Carolina League of Conservation Voters, Inc. v. Hall*.

SCONC order on Int's Motion p. 2

On December 13, 2021, Intervenor-Applicant Common Cause filed the present Motion to Intervene, and responses were received from both Harper and NCLCV Plaintiffs and Legislative and State Defendants on December 14, 2021. On December 13, 2021, the undersigned panel entered a Scheduling Order, setting a trial date for January 3, 2021.

The parties have informed the Court of their respective positions on the Motion, and the matter is now ripe for resolution by the Court.

Motion to Intervene

On December 13, 2021, Intervenor-Applicant filed the present motion pursuant to Rule 24 of the North Carolina Rules of Civil Procedure, accompanied by a pleading setting forth the claim or defense for which intervention is sought. Intervenor-Applicant seeks to intervene in this matter as a plaintiff, seeking intervention both as of right and permissively. Intervenor-Applicant seeks to challenge the process the General Assembly undertook in creating the Enacted Plans as intentional racial discrimination and to challenge the Enacted Plans as partisan gerrymanders.

“Intervention in North Carolina is governed by statute. Rule 24 of the North Carolina Rules of Civil Procedure determines when a third party may intervene as of right or permissively.” *Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 458, 515 S.E.2d 675, 682 (1999).

Intervention as of right in an action is provided by Rule 24(a), which states that

[u]pon timely application anyone shall be permitted to intervene in an action:

- (1) When a statute confers an unconditional right to intervene; or
- (2) When the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

N.C.G.S. § 1A-1, Rule 24(a). Permissive intervention in an action is provided by Rule 24(b), which states that:

[u]pon timely application anyone may be permitted to intervene in an action.

- (1) When a statute confers a conditional right to intervene; or

(2) When an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or State governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, such officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

N.C.G.S. § 1A-1, Rule 24(b). Permissive intervention “rests within the sound discretion” of the court, *Virmani*, 350 N.C. at 460, 515 S.E.2d at 683.

As an initial matter, the Court considers Intervenor-Applicant’s Motion to be timely made. The Motion was filed shortly after the Supreme Court of North Carolina’s Order granting a temporary stay of the candidate filing period and ordering this Court to hold proceedings and rule on the merits of Plaintiffs’ claims. The Motion was also filed prior to the entry of the Scheduling Order in this case, and Intervenor-Applicant has represented that it is willing and able to meet any Scheduling Order set forth by this Court in this matter.

As to Intervenor-Applicant’s Motion to intervene as of right, the Court finds that Intervenor-Applicant’s interests are adequately represented in this case by the existing parties—namely the current, named Plaintiffs that seek the same ultimate relief.

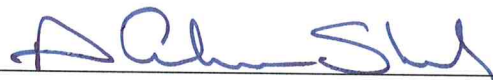
As to Intervenor-Applicant’s Motion to intervene permissively, this Court finds that Intervenor-Applicant’s claims have questions of law or fact in common with the main action. Intervenor-Applicant is a non-profit, nonpartisan democracy organization whose mission is dedicated to fair elections. Intervenor-Applicant has members, staff and supporters in every district of the challenged Enacted Plans. Plaintiffs contend that allowing Intervenor-Applicant to intervene in this matter will further limit the already compressed time allotment for Plaintiffs’ trial presentation. However, this Court finds—in consideration of the Supreme Court’s directive to this Court to resolve all claims on the merits by January 11, 2022— that

intervention by this Intervenor-Applicant at this early stage of the litigation will not unduly delay or prejudice the adjudication of the rights of the original parties in this action. The current schedule and trial procedures in the December 13, 2021, Scheduling Order can accommodate the addition of this Intervenor-Applicant as a plaintiff in these consolidated cases.

For the foregoing reasons, the Court hereby ORDERS as follows:

1. Intervenor-Applicant's Motion to intervene as of right is DENIED.
2. Intervenor-Applicant's Motion for permissive intervention under Rule 24(b) is hereby GRANTED at the Court's discretion, and Intervenor-Applicant shall hereinafter be designated as "Plaintiff" in this matter.
3. Given the time limitations, Common Cause shall file the Complaint, presented to the Court as Exhibit A to the Motion to Intervene, within one (1) day of the entry of this Order. Defendants may then plead in response to Common Cause's Complaint by filing a responsive pleading by 5:00 PM EST on December 17, 2021, as provided for responsive pleadings to amended complaints in the Scheduling Order; however, Defendants need not answer Common Cause's Complaint. If a defendant chooses not to answer the allegations of the Complaint, then those allegations will be deemed denied.
4. Intervenor-Applicant must comply with the previously filed Scheduling Order.

SO ORDERED, this the 15th 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 15th day of December 2021.



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