

STATE OF NORTH CAROLINA

COUNTY OF WAKE

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

and

COMMON CAUSE,
Plaintiff-Intervenor,

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
21 CVS 015426

FILED
2021 DEC 20 AM 10:58
WAKE CO., C.S.C.
BY _____

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
21 CVS 500085

**ORDER GRANTING IN PART LEGISLATIVE DEFENDANTS' MOTION FOR
PARTIAL RECONSIDERATION AND ORDER CLARIFYING CASE SCHEDULING
ORDER**

THIS MATTER came before the undersigned three-judge panel upon Legislative Defendants' motion for partial reconsideration of this Court's Order on Legislative Defendants' Motion to Compel, dated December 15, 2021.

Procedural and Factual Background

In this litigation, Plaintiffs seek a declaration that the Congressional, North Carolina Senate, and North Carolina House of Representatives districts established by an act of the General Assembly in 2021, N.C. Sess. Laws 2021-174 (Senate Bill 750), 2021-173 (Senate Bill 739), and 2021-175 (House Bill 976), violate the rights of Plaintiffs under the North Carolina Constitution. Plaintiffs seek to enjoin the future use of the 2021 congressional and state legislative districts.

On December 8, 2021, after receiving an order from the Supreme Court of North Carolina directing this Court to resolve all Plaintiffs' claims on the merits by January 11, 2022, this Court requested that all parties submit proposed scheduling orders by December 10, 2021.

On December 13, 2021, this Court entered a Case Scheduling Order giving the parties until December 23, 2021, to exchange evidence, including expert witness reports. Paragraph 4 of the Case Scheduling Order further provided that “[e]xpert reports produced to an opposing party shall be accompanied by all source code, source data, input parameters, and all outputted data.” On December 14, 2021, Legislative Defendants filed a motion to compel both Harper Plaintiffs and NCLCV Plaintiffs (collectively “Plaintiffs”) to produce source code, source data, input parameters, and outputted data pertaining to the expert reports produced during the preliminary-injunction phase of this litigation.

On December 15, 2021, at the Court's direction, Plaintiffs submitted written responses stating their position on the Motion to Compel. NCLCV Plaintiffs contended that Legislative Defendants' motion was premature and requested the production of documents that “were not provided to, were never in the possession of, and were not considered by” their expert, Professor Moon Duchin and therefore not subject to production pursuant to Rule 26(b)(4) of the North Carolina Rules of Civil Procedure. Harper Plaintiffs additionally submitted a

Motion for Protective Order with their response to Legislative Defendants' Motion to Compel. Also on December 15, 2021, full consideration being given to the motion, the Court, in its discretion, entered an order granting in part Legislative Defendants' motion to compel.

Within its December 15, 2021, Order, the Court also decreed that NCLCV Plaintiffs would not be required to produce any documents or information that NCLCV Plaintiffs' expert, Professor Moon Duchin, did not consider or receive. Legislative Defendants thereafter filed the present Motion for Partial Reconsideration of this aspect of the Court's December 15, 2021 Order. Legislative Defendants contend that the Court's order would "shield most or all discovery" concerning the NCLCV Plaintiffs' "Optimized Maps." To the extent this is true, the Court now clarifies its prior ruling. NCLCV Plaintiffs submitted a written response to the motion on December 16, 2021.

As an initial matter, the Court notes that there is "no mention of a 'motion to reconsider' in the North Carolina Rules of Civil Procedure." *See Doe v. City of Charlotte*, 273 N.C. App. 10, 16 (2020). As such, the Court will treat this motion as a motion to revise made pursuant to N.C.G.S. § 1A-1, Rule 54(b) of the North Carolina Rules of Civil Procedure.

At issue in the Motion for Partial Reconsideration is all source code, source data, input parameters, and all outputted data associated with the Optimized Maps that were presented to the Court in the Complaint. In fact, the Optimized Maps are referenced over ninety (90) times by the NCLCV Plaintiffs in their Complaint. The Optimized Maps were filed as Exhibits in this case for the Court to consider through the Affidavit of Stephen D. Feldman in order that they could be considered in ruling on the NCLCV's Plaintiffs' Motion for Preliminary Injunction. The Optimized Maps were filed separate from and independent of the Affidavit Professor Duchin. At the hearing on the Motion for Preliminary Injunction the NCLCV Plaintiffs mentioned the Optimized Maps on numerous occasions and provided the Court with copies of the same. Perhaps most importantly, NCLCV Plaintiffs, in both their

Complaint and at the hearing on the Motion for Preliminary Injunction, requested that in the event Legislative Defendants are required to draw remedial maps and fail to do so to the satisfaction of the Court, that the Court require the use of the Optimized Maps for the 2022 Elections. While it is true that the information at issue could not be discovered through the expert discovery of Professor Duchin, as she neither received nor relied upon such information in forming her opinions, the information is relevant and subject to discovery as NCLCV Plaintiffs have put the issue of the Optimized Maps before the Court.

After considering Legislative Defendants' motion for partial reconsideration and NCLCV Plaintiffs' written response, as well as the matters contained therein, the Court, in its discretion, rules upon Legislative Defendants' motion as follows: NCLCV Plaintiffs shall produce to the Legislative Defendants the method and means by which the Optimized Maps were formulated and produced, including, but not limited to all source code, source data, input parameters, and all outputted data associated with the Optimized Maps. NCLCV Plaintiffs shall further identify any and all persons who took part in drawing or participated in the computerized production of the Optimized Maps. All such information shall be produced to Legislative Defendants by 5:00 PM EST December 23, 2021.

SO ORDERED, this the 20 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:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Harper Plaintiffs

Stephen D. Feldman
Adam K. Doerr
Erik R. Zimmerman
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
adoerr@robinsonbradshaw.com
ezimmerman@robinsonbradshaw.com
Counsel for NCLCV Plaintiffs


Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Jeffrey Loperfido
SOUTHERN COALITION FOR
SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org
jeffloperfido@scsj.org
Counsel for Common Cause Plaintiff-Intervenor

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
NELSON MULLINS RILEY &
SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Phillip.strach@nelsonmullins.com
Tom.farr@nelsonmullins.com
Alyssa.riggins@nelsonmullins.com
Counsel for Legislative Defendants

Terence Steed
Amar Majmundar
Stephanie A. Brennan
NORTH CAROLINA DEPARTMENT
OF JUSTICE
Post Office Box 629
Raleigh, NC 27602
tsteed@ncdoj.gov
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
Counsel for State Board Defendants

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 20th day of December 2021.



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