

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
FILE NO. 21 CVS 015426

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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
FILE NO. 21 CVS 500085

ORDER ON HARPER PLAINTIFFS' MOTION FOR CLARIFICATION

THIS MATTER came before the undersigned three-judge panel upon Harper Plaintiffs' motion for clarification of this Court's Case Scheduling Order on December 13, 2021.

Procedural and Factual Background

In this litigation, Plaintiffs seek a declaration that the North Carolina 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 13, 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 entered a Case Scheduling Order giving the parties until December 23, 2021, to exchange evidence, including expert witness reports and fact witness affidavits.

On December 21, 2021, Harper Plaintiffs' filed the present motion, requesting this Court to clarify that fact witness affidavits will be admissible as evidence at trial, without regard to hearsay objections, so long as all parties have an opportunity to depose the proponents of the affidavits and to offer the deposition testimony as evidence.

Written responses were thereafter received from the Legislative Defendants and Common Cause Plaintiffs with the NCLCV Plaintiffs informing the Court they would not respond to the Motion for Clarification. Therefore, the matter is now ripe for review.

After considering Harper Plaintiffs' motion for clarification and the responses to that motion, the Court, in its discretion, rules upon Harper Plaintiffs' motion as follows:

As an initial matter, the Court notes that, like a "motion to reconsider," there is no mention of a "motion to clarify" 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.

The North Carolina Rules of Civil Procedure apply “in all actions and proceedings of a civil nature,” such as the current matter, unless a different procedure is prescribed by statute. N.C.G.S. § 1A-1, Rule 1. Additionally, the North Carolina Rules of Evidence apply “to all actions and proceedings in the courts of this State.” N.C.G.S. § 8C-1, Rule 1101. Accordingly, the hearsay-related rules provided in the North Carolina Rules of Civil Procedure and Evidence apply in the current litigation. This Court is not aware of any authority to suspend these rules or require that a party waive their objections under them. If there are no objections and the parties consent to the admission of the fact witness affidavits, however, this Court will allow their admission.

While the Court understands the time limitations in this case, it is bound by them. 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.

For the foregoing reasons, and in the Court’s discretion, this Court declines to rule that fact witness affidavits will be admissible at trial without regard to hearsay, and Harper Plaintiffs’ motion for clarification is therefore DENIED. In accordance with Paragraph 8 of the Case Scheduling Order, objections to any of the exchanged evidence, including objections based upon hearsay, may be raised and will be heard at trial.

SO ORDERED, this the 02nd 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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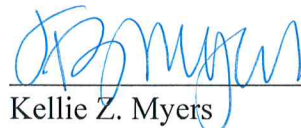
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Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 22nd day of December 2021.



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