

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.

COMMON CAUSE,

Plaintiff,

v.

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

Defendants.

**HARPER PLAINTIFFS'  
MOTION TO COMPEL  
RESPONSES TO SECOND  
SET OF  
INTERROGATORIES AND  
FIRST SET OF REQUESTS  
FOR PRODUCTION**

Pursuant to North Carolina Rule of Civil Procedure 37, *Harper* Plaintiffs move to compel responses to their Second Set of Interrogatories and their First Set of Requests for Production to Legislative Defendants. Those discovery requests seek information about the enacted 2021 Plans that is the mirror image of the information this Court ordered *NCLCV* Plaintiffs to produce with respect to their “optimized maps,” namely, information about who participated in drawing the maps, as well as inputted and outputted data associated with the maps, including any analysis of each map’s characteristics. Plaintiffs request that the Court order Legislative Defendants to produce this information by December 28 at 9 a.m.

### **BACKGROUND**

In its December 20, 2021 order on Legislative Defendants’ motion for reconsideration, this Court ordered *NCLCV* plaintiffs, by December 23 at 5 p.m., to “identify any and all persons who took part in drawing or participated in the computerized production of the Optimized Maps,” and to produce to 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.” 12/20/21 Order at 4. The Court explained that, while such data were not proper *expert* discovery, they were properly the subject of *fact* discovery because *NCLCV* Plaintiffs had requested that the Court order use of the Optimized Maps.

The next morning, *Harper* Plaintiffs served discovery requests seeking the same information about the enacted 2021 Plans. *See* Exs. A, B. In particular, *Harper* Plaintiffs issued interrogatories asking Legislative Defendants to identify all persons who took part in drawing the 2021 Plans in any way, including by advising Legislative Defendants on those plans, and including any outside consultants or advisors. Ex. A at 4. *Harper* Plaintiffs also sought all

documents or data that Legislative Defendants or others who participated in the mapdrawing relied on, including in particular all source or inputted data and all analysis. Ex. A at 4 (interrogatory requesting identification of such material); Ex. B at 4 (request for production of such material). *Harper* Plaintiffs sought this information by December 23 at 5 p.m., the same deadline that the Court gave to the *NCLCV* Plaintiffs.

Legislative Defendants failed to respond. On December 24, Plaintiffs wrote to ask Legislative Defendants why they had failed to respond, noting that the information sought was the same information that the Court had ordered the *NCLCV* Plaintiffs to produce concerning their Optimized Maps, and asking if Legislative Defendants intended to invoke legislative privilege. Legislative Defendants responded via email that, under Rule 33 and 34, their responses were not due until 30 days after service unless the Court shortens the time—i.e., until after the trial in this case. Ex. C. (Legislative Defendants had never previously suggested to Plaintiffs that they believed the ordinary timelines for discovery to govern this case and did not so advise Plaintiffs after receiving the discovery requests on December 21.) Legislative Defendants further responded that the “information requested in the discovery requests is publicly available” on the General Assembly’s website and YouTube. *Id.*

## **ARGUMENT**

Legislative Defendants do not dispute that Plaintiffs are entitled to the requested discovery, which seeks exactly the same information about the 2021 Plans—i.e., the plans actually at issue in this case—that Legislative Defendants already obtained about the *NCLCV* Plaintiffs’ Optimized Maps. Nor have they indicated that they are invoking any privilege.

Neither of Legislative Defendants’ two proffered reasons for refusing to respond to the interrogatories and document request is legitimate. First, as to their complaint about timing, it is

entirely improper in the context of this case for Legislative Defendants to sandbag Plaintiffs by taking the position, after the deadline Plaintiffs provided for a response has passed and on a national holiday, that their responses are not due until after the trial is over absent an order from the Court. Legislative Defendants have demanded discovery from Plaintiffs via email, without even serving formal discovery requests, on expedited timelines.

In any event, this Court should simply order Legislative Defendants to respond by December 28 at 9 a.m. Plaintiffs are already suffering significant prejudice as a consequence of Legislative Defendants' failure to respond in time for the deposition of Representative Hall, which is taking place today. Senator Hise's deposition is scheduled for December 29.

Legislative Defendants also stated that "the information requested in the discovery requests is publicly available at [www.ncleg.gov](http://www.ncleg.gov) and YouTube ([NCGA Redistricting - YouTube](#))." Ex. C. This is, of course, not true. There is no list on the General Assembly website or on YouTube identifying all of the people who were involved in drawing the 2021 Plans. In any event, Rule 33 requires parties to answer interrogatories "in writing under oath," and requires the answers "to be signed by the person making them." An unsworn email from counsel is not a proper response, especially an email taking a position that is patently false.

Plaintiffs also requested the identification and production of all source data used in drawing the 2021 Plans and all outputs, including analysis of the 2021 Plans by Legislative Defendants, their aides or consultants, or anyone else involved in drawing the plans. That material is, of course, not all publicly available. If it is, Rule 33 requires each Legislative Defendant to identify those materials, indicate where they are available via specific hyperlink to each document, and importantly, to swear that they did not rely on any additional material.

## **CONCLUSION**

Plaintiffs respectfully request that the Court order Legislative Defendants to fully respond to the interrogatories and document requests, which simply seek the same information about the 2021 Plans that Legislative Defendants sought about the *NCLCV* Plaintiffs' Optimized Maps, by December 28 at 9 a.m.

Respectfully submitted, this the 27th day of December, 2021.

By: /s/ Paul E. Smith

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*\*Pro hac vice motion pending*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served this day *by email*, addressed to counsel for all other parties.

This the 27th day of December, 2021.

/s/ Paul E. Smith  
Paul E. Smith, NC Bar No. 45014