

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, *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  
REASONABLE HEALTH &  
SAFETY  
ACCOMMODATIONS AT  
TRIAL**

The *Harper* Plaintiffs respectfully submit this motion to request the adoption of reasonable health and safety accommodations at trial in the above-captioned matters in light of the current surge in COVID-19 cases.

The Omicron variant has caused an unprecedented spike in COVID-19 cases nationwide that poses significant complications for the upcoming trial in these matters. Reports of new daily cases have increased by more than 80% over the past two weeks throughout the United States. In North Carolina, the number of new cases of COVID-19 over the past two weeks has increased by 22%. *See Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times (Dec. 26, 2021).<sup>1</sup> And many lawyers likely to attend trial—for both Plaintiffs and Defendants—are traveling from Washington D.C., which has experienced a 622% increase in COVID-19 cases over the past two weeks. *See id.*

Experts widely believe that these trends will accelerate due to the significant amount of travel and large gatherings during the Christmas and New Year’s Eve holidays. *See Hospitals Brace for a COVID Surge as People Travel for the Holidays*, NPR (Dec. 20, 2021).<sup>2</sup> Trial in this case is currently scheduled to begin immediately afterward on January 3, 2022. Beyond this, the recent surge in COVID-19 cases has led to thousands of flight cancellations within the United States including more than 1,300 cancelled flights on Sunday, December 26, alone. *See Marc Tracy et al., Flight Disruptions Continue with Thousands More Cancellations as Omicron Thins Airline Crews*, N.Y. Times (Dec. 26, 2021).<sup>3</sup>

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<sup>1</sup> <https://www.nytimes.com/interactive/2021/us/covid-cases.html>.

<sup>2</sup> <https://www.npr.org/2021/12/20/1065722923/hospitals-brace-for-a-covid-surge-as-people-travel-for-the-holidays>.

<sup>3</sup> <https://www.nytimes.com/2021/12/27/business/weekend-flights-canceled-omicron.html>.

The Omicron variant is significantly more transmissible than other strains of COVID-19. *See* Omicron Variant: What You Need to Know, Centers for Disease Control and Prevention (Dec. 20, 2021).<sup>4</sup> And while the Centers for Disease Control and Prevention asserts that current vaccines are expected to protect against severe illness caused by the Omicron variant, they may be insufficient to prevent vaccinated individuals from contracting and spreading the virus. *Id.* Similarly, those who were infected with a prior strain of COVID-19 can be reinfected by the Omicron variant and spread the virus. *See id.*; Clara-Laeila Laudette, *Omicron More Likely to Reinfect than Delta, No Milder – Study*, Reuters (Dec. 17, 2021).<sup>5</sup> Increased transmissibility threatens the health and safety of all trial participants and poses particular dangers for immunocompromised and unvaccinated individuals. Notably, multiple lawyers and witnesses on Plaintiffs’ side have small children who are not yet eligible for vaccination and are at risk from Omicron.

The current surge of COVID-19 cases poses concerns for trial. Lawyers and witnesses may be unable to appear at trial in person if they have recently tested positive for COVID-19. Those who contract the virus may not learn of their positive diagnoses until the eve of trial, leaving Plaintiffs’ and Defendants’ counsel with little time to adjust their trial preparations. Worse (and perhaps more likely), lawyers and witnesses could learn of positive COVID-19 diagnoses only after having been in close proximity to others in the courtroom—leading to significant disruptions of trial proceedings. And ongoing flight cancellations could prevent lawyers and witnesses from traveling to North Carolina regardless of whether they contracted COVID-19. Apart from these logistical challenges, the variant poses serious health and safety risks, particularly to those who

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<sup>4</sup> <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html>.

<sup>5</sup> <https://www.reuters.com/business/healthcare-pharmaceuticals/omicron-five-times-more-likely-reinfect-than-delta-study-says-2021-12-17/>.

have a heightened risk of developing severe illness from COVID-19 or who have family members who are unable to be vaccinated. These risks could deter lawyers and witnesses from participating in this trial if in-person attendance is required.

These risks have prompted at least one other court presiding over a redistricting challenge to cancel in-person proceedings scheduled for the week of January 3, 2022, and instead conduct proceedings remotely via Zoom. *See* Ex. A, Order, *Caster v. Merrill*, No. 2:21-cv-1536-AMM (N.D. Ala. Dec. 22, 2021). Given this Court's preference to hold proceedings in person, we respectfully request that the Court adopt the following accommodations to minimize the risk of substantial disruptions to the upcoming trial and protect the health and safety of those in attendance:

**Testing or Proof of Vaccination:** The Court should require those in attendance to provide proof of vaccination or proof of a negative COVID-19 PCR test taken within 24 hours of the commencement of trial.

**Remote Participation for Witnesses:** The Court should give all witnesses the option to testify remotely at trial.

**Remote Participation for Counsel:** The Court should require counsel to appear at trial in person unless counsel is unable to attend for any of the following reasons:

- (a) Counsel tested positive for COVID-19 or has developed symptoms of COVID-19.
- (b) Counsel is unable to participate in person due to a COVID-19-related flight cancellation.
- (c) Counsel lacks proof of vaccination or proof of a negative COVID-19 PCR test taken within 24 hours of the commencement of trial.

(d) Counsel has been notified of a recent exposure to someone who has tested positive for COVID-19, but has not yet received a negative PCR test result.

**Masks and Social Distancing:** The Court should require those in attendance to practice social distancing to the extent practicable. The Court should continue to require all those in attendance to wear masks within the courtroom, except when speaking to the Court.

Counsel for the remaining Plaintiff groups and for the Defendants have been notified of this motion. We understand that the *NCLCV* and *Common Cause* Plaintiffs will submit their position to the Court. The Legislative Defendants indicated that they will not seek COVID-19 related accommodations before the Court provides trial information and courtroom logistics to the parties on December 28, 2021, and further noted that their position remains that all witnesses should participate in trial in person. We have not yet heard from the State Defendants as to their position.

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

By: /s/ Narendra K. Ghosh

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*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 counsel for all other parties.

This the 27th day of December, 2021.

/s/ Graham W. White  
Graham W. White (admitted *pro hac vice*)