

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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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 REASONABLE HEALTH AND  
SAFETY ACCOMMODATIONS AT TRIAL**

THIS MATTER came before the undersigned three-judge panel upon Harper Plaintiffs' Motion for Reasonable Health and Safety Accommodations at Trial submitted to the Court on December 27, 2021.<sup>1</sup>

#### Procedural History

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) (collectively the "Enacted Plans"), 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 setting trial to commence on January 3, 2022, and conclude by January 6, 2022. As noted in the Case Scheduling Order, the trial for these consolidated cases will be conducted in person at Campbell University School of Law.

#### COVID-19

On November 30, 2021, the United States designated COVID-19 variant Omicron a variant of concern, and on December 1, 2021, the first confirmed case of Omicron was identified in the United States.<sup>2</sup> As of December 20, 2021, Omicron has been responsible for increased cases of COVID-19.<sup>3</sup> The Centers for Disease Control and Prevention (CDC) has issued recommendations for when a person may need to quarantine due to a possible

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<sup>1</sup> As December 27, 2021 is a court holiday and court offices were closed for purposes of filing, the Hon. A. Graham Shirley has accepted Plaintiffs Motion for filing on the 27<sup>th</sup> day of December, 2021, pursuant to Rule 5(e) of the North Carolina Rules of Civil Procedure.

<sup>2</sup> Emergence of Omicron. Centers for Disease Control. <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html> (last visited Dec. 28, 2021).

<sup>3</sup> *Id.*

exposure to the virus or isolate when a person has been infected with the virus.<sup>4</sup> These periods of quarantine and isolation have recently been shortened by the CDC.<sup>5</sup>

### Harper Plaintiffs' Motion

Harper Plaintiffs request accommodations related to the emergence of the Omicron variant and subsequent surge of confirmed COVID-19 cases. NCLCV Plaintiffs have also indicated support for Harper Plaintiffs' request.

The Court notes the weight that the ongoing COVID-19 pandemic has placed on the justice system as a whole and, consequently, the ways in which courts have adapted to the challenges presented by the pandemic. Our North Carolina Constitution provides that “[a]ll courts shall be open . . . and right and justice shall be administered without favor denial, or delay.” N.C. Const. Art. I, § 18. Wake County trial courts, keeping this principle in mind, have remained open to the best of their ability during the course of the COVID-19 pandemic, holding in-person proceedings—including trials—whenever possible.

The Court has balanced the very real challenges presented by the COVID-19 pandemic and the Omicron variant with the urgency and import of the issues in this litigation, as well as the promotion of judicial economy to meet the Supreme Court's January 11, 2022, deadline to resolve these actions on the merits. Accordingly, the Court hereby **ORDERS** the following in its discretion and pursuant to its inherent authority to govern the proceedings before the Court:

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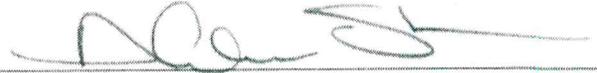
<sup>4</sup> Quarantine and Isolation. Centers for Disease Control. <https://www.cdc.gov/coronavirus/2019-ncov/your-health/quarantine-isolation.html> (last visited December 28, 2021). See also Quarantine Guidance for the General Community. North Carolina Department of Health and Human Services. <https://covid19.ncdhhs.gov/about-covid-19/testing/quarantine-guidance-general-community> (last visited December 28, 2021).

<sup>5</sup> CDC Updates and Shortens Recommended Isolation and Quarantine Period for General Population. Centers for Disease Control. <https://www.cdc.gov/media/releases/2021/s1227-isolation-quarantine-guidance.html> (last visited December 28, 2021).

1. If no witness, counsel of record, or presiding judge assigned to this three-judge panel must quarantine or isolate pursuant to current CDC guidelines, then the trial of these consolidated actions will commence in person in accordance with the Case Scheduling Order.
2. If a witness or counsel of record tests positive for COVID-19 such that CDC guidance requires them to isolate or has been in close contact with someone who has tested positive for COVID-19 such that CDC guidance requires them to quarantine, then that witness or counsel shall be allowed to attend and participate in the trial proceedings via WebEx during their quarantine period.
3. If a presiding judge assigned to this three-judge panel tests positive for COVID-19 such that CDC guidance requires them to isolate or has been in close contact with someone who has tested positive for COVID-19 such that CDC guidance requires them to quarantine, then the entirety of the trial proceedings will be conducted via WebEx.
4. Given, among other factors, the open courts requirement of Article 1, Section 18 of the North Carolina Constitution and the fact that the Court has no power to control access to the building in which the trial will be held or the hallways and corridors immediately outside of the Courtroom or require proof of vaccination and testing for admittance to those areas, the Court declines to require testing and proof of vaccination for individuals attending trial in person. The parties are free to confer and agree to these additional measures, if they so choose, without the Court's intervention.
5. Each party is limited to no more than two (2) counsel and one (1) paralegal at counsel's table during trial. Additional counsel and staff must remain in designated areas reserved for parties outside the courtroom during the trial.
6. Every person who enters the facility, including the courtroom, must be masked pursuant to the face covering policy of Campbell University School of Law. Only counsel and witnesses who are speaking may remove their mask to do so if needed.

SO ORDERED, this the 29<sup>th</sup> day of December, 2021.

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12/29/21



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 29<sup>th</sup> day of December 2021.

/s/ Kellie Z. Myers \_\_\_\_\_  
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