

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 015426

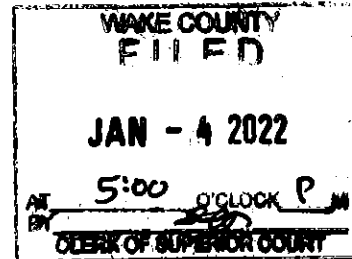
NORTH CAROLINA LEAGUE, OF
CONSERVATION VOTERS, INC., *et al.*,
Plaintiffs

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.



STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 500085

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.

**ORDER ON LEGISLATIVE DEFENDANTS' MOTION TO STRIKE PORTIONS OF
DR. MOON DUCHIN'S REBUTTAL REPORT**

THIS MATTER came before the undersigned three-judge panel upon Legislative Defendants' Motion to Strike filed on January 3, 2022, pursuant to Rules 26(b)(4)(f) and 37 of the North Carolina Rules of Civil Procedure and Rules 702, 703, and 705 of the North Carolina Rules of Evidence.

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) (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 giving the parties until December 23, 2021, to exchange expert witness’ reports; December 28, 2021, to exchange rebuttal evidence, including rebuttal expert reports; and December 31, 2021, for parties to conduct expert discovery depositions.

On January 3, 2022, Legislative Defendants filed the present Motion, alleging that portions of the rebuttal expert report submitted by Dr. Moon Duchin on behalf of NCLCV Plaintiffs on December 28, 2021, (“Duchin Rebuttal Report”) is not valid rebuttal evidence and, to the extent it constitutes initial expert opinion, is therefore untimely submitted.

NCLCV Plaintiffs submitted a written response to the Motion on January 4, 2022, informing the Court of its position on the Motion. This Court rendered its ruling upon the Joint Motion in open court at the trial of these consolidated cases on January 4, 2022, and the Court’s reasoning is more fully set forth below.

The Court finds that while the Duchin Rebuttal Report does present expert analysis on the congressional maps at issue in this litigation when Dr. Barber’s initial expert report only addressed the state legislative maps, the information presented in the Duchin Rebuttal Report does go to an analysis and rebuttal of Dr. Barber’s analytical techniques and

methodology. Furthermore, in particular consideration of the expedited timeframe in which this case has proceeded, the Court finds that the Duchin Rebuttal Report in full will be helpful to the Court in analyzing the issues in this litigation. The Court further finds that Legislative Defendants will not be prejudiced by the denial of this Motion. Accordingly, the Court concludes that the Motion should be denied.

WHEREFORE, the Court, for the reasons stated herein and in the exercise of its discretion, hereby **ORDERS** that Legislative Defendants' Motion to Strike is **DENIED**.

SO ORDERED, this the 4 day of January 2022.



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 5th day of January, 2022.

/s/ Kellie Z. Myers
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