

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
21 CVS 015426, 21 CVS 500085

NORTH CAROLINA LEAGUE OF  
CONSERVATION VOTERS, INC.;  
HENRY M. MICHAUX, JR., et al.,

Plaintiffs,

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.

Accepted by the Court  
for filing by the Hon. A.  
Graham Shively pursuant  
to N.C. Civ. P. Rule 56(d).  
DA 2-10-22

**NCLCV PLAINTIFFS' RESPONSE  
TO LEGISLATIVE DEFENDANTS'  
PROPOSED SPECIAL MASTER**

Pursuant to this Court's February 9, 2022 Order for Responses to Special Master Candidates, the NCLCV Plaintiffs respectfully oppose the selection of the Special Master suggested by the Legislative Defendants, John Morgan.

Significant questions exist about whether Mr. Morgan has the neutrality required to assist the Court in the critical task the North Carolina Supreme Court has set. Aside from his positions at Applied Research Coordinates, Mr. Morgan's sole employment consists of Republican-aligned political-action funds (one chaired by former Republican representative J.C. Watts; another chaired by former Republican representative John Shadegg). Moreover, Mr. Morgan's work has repeatedly been rejected by courts—precisely because, in prior engagements, they have found that his work was not neutral.<sup>1</sup>

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<sup>1</sup> Mr. Morgan's credentials also do not approach those of the other candidates who have been proposed: He has no advanced degree, has never held an academic appointment, and has never published a peer-reviewed article.

**Ohio 2022.** Recently, the Ohio Supreme Court invalidated maps drawn by the Ohio Redistricting Commission as unconstitutional partisan gerrymanders. The mapdrawer for the invalidated Senate plan was Ray DiRossi, who worked for the Republican Caucus; the opinion identifies Mr. Morgan as a “technical consultant” to Mr. DiRossi. *League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, slip op. 2022-Ohio-65, 2022 WL 110261, ¶ 168 (Ohio Jan. 12, 2022).

**Ohio 2019.** A federal district court identified Mr. Morgan as a “national Republican operative[]” who “advised . . . and collaborated with” “Ohio Republican staffers” on drawing maps; Mr. Morgan “gave a presentation on map drawing, advising map drawers to keep the process secret and to score the maps to determine the likely partisan outcome.” *Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978, 998 (S.D. Ohio), *vacated and remanded sub nom. Chabot v. Ohio A. Philip Randolph Inst.*, 140 S. Ct. 101 (2019); *see also Ohio A. Philip Randolph Inst. v. Householder*, 367 F. Supp. 3d 697, 715 (S.D. Ohio 2019) (explaining that Mr. Morgan collaborated with Mr. DiRossi in drawing the map). Mr. Morgan told mapmakers that, when it came to the redistricting process, they should “keep it secret, keep it safe.” Plaintiffs’ Proposed Findings of Fact, *Ohio A. Philip Randolph Inst. v. Householder*, No. 1:18-cv-00357-TSB-KNM-MHW, ECF 251-1 at 14 (S.D. Ohio Mar. 23, 2019) (quoting Tr’l Ex. P346). Other “national Republican operatives” who “collaborated” included “Mark Braden”—counsel to Legislative Defendants here—and “Tom Hofeller,” who drew the North Carolina maps invalidated in *Common Cause v. Lewis*. *Ohio A. Philip Randolph Inst.*, 373 F. Supp. 3d at 998–99. The Ohio federal district court invalidated the map Mr. Morgan helped draw as a partisan gerrymander. *Id.* at 1170.

**Virginia 2018.** In Virginia, Mr. Morgan has been described as a “gerrymandering mastermind.”<sup>2</sup> In 2018, a federal district court invalidated eleven Virginia House of Delegates districts that Mr. Morgan helped to draw on the ground that the mapdrawers “subordinated traditional districting criteria to racial considerations.” *Bethune-Hill v. Va. State Bd. of Elections*, 326 F. Supp. 3d 128, 173 (E.D. Va. 2018). The court rejected Mr. Morgan’s claims that he “really didn’t take race into account” in drawing districts and found that “Morgan’s testimony was wholly lacking in credibility.” *Id.* at 174. The court explained that its “adverse credibility findings are not limited to particular assertions of” Mr. Morgan, “but instead wholly undermine the contents of ... [his] testimony.” *Id.* These findings were “outcome-determinative” in the case. *Id.*

**Michigan 2021.** The Legislative Defendants note that Mr. Morgan is currently engaged by the Michigan Independent Citizens Redistricting Commission. The proposal in that case, however, identified Mr. Morgan’s firm as “the top Republican map drawing firm” and the proposal described Mr. Morgan as a “subcontractor” to a prime contractor that “is sometimes viewed with Democratic leanings.” Election Data Services, Inc., *Proposal to Michigan Independent Citizens Redistricting Commission for Line Drawing and Redistricting Technical Services* at 1 (Feb. 10, 2021), [https://www.michigan.gov/documents/sos/MICRC\\_Election\\_Data\\_Services\\_717054\\_7.pdf](https://www.michigan.gov/documents/sos/MICRC_Election_Data_Services_717054_7.pdf). Mr. Morgan thus served as the “Republican” half of a “bi-partisan team,” not as a neutral and independent advisor. *Id.*

**North Carolina 2011.** Mr. Morgan was one of “four individuals engaged by the 2011 [North Carolina] General Assembly to draw maps,” along with “Dr. Thomas Hofeller.” Reply Br.

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<sup>2</sup> Ben Paviour, Va. Pub. Media, *A Blank Slate & Familiar Face as Virginia Redistricting Begins New Maps*, Aug. 23, 2021, <https://vpm.org/news/articles/24853/a-blank-slate-and-familiar-face-as-virginia-redistricting-begins-new-maps> (quoting statement of Virginia Delegate Marcus Simon).

of Legislative Defendants, *Dickson v. Rucho*, 366 N.C. 332, 737 S.E.2d 362 (2013) (No. 201PA12) (filed July 6, 2012). The Legislative Defendants admitted, and the *Common Cause* Court found, that those 2011 plans were “designed to ensure Republican majorities in the House and Senate.” *Common Cause v. Lewis*, No. 18-CVS-014001, 2019 WL 4569584, at \*4 (N.C. Super. Sep. 3, 2019). A federal court invalidated 28 of the districts in those plans as unconstitutional racial gerrymanders. *Covington v. North Carolina*, 316 F.R.D. 117, 124 (M.D.N.C. 2016), *summarily aff’d*, 137 S. Ct. 2211 (2017).

\* \* \*

The NCLCV Plaintiffs respectfully submit that, given the critical and sensitive task before this Court, the Court should not select a Special Master whose background will inevitably spur legitimate questions about objectivity and neutrality—particularly given the many qualified candidates that the NCLCV Plaintiffs have identified.

Dated: February 10, 2022

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## CERTIFICATE OF SERVICE

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