

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

2021 DEC 21 P 4: 17

SUPERIOR COURT DIVISION

21 CVS 015426

WAKE CO., C.S.S.

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

REBECCA HARPER, et al.,

COMMON CAUSE,

*Plaintiffs,*

v.

REPRESENTATIVE DESTIN HALL, in his official capacity as Chair of the House Standing Committee on Redistricting, et al.

*Defendants.*

**PLAINTIFF COMMON CAUSE'S  
NOTICE OF JOINDER  
AND RESPONSE IN SUPPORT OF  
HARPER PLAINTIFF'S MOTION FOR  
CLARIFICATION AS TO THE  
ADMISSIBILITY OF FACT WITNESS  
AFFIDAVITS**

NOW COME Plaintiff Common Cause to notice its support of and joinder to the motion by the *Harper* Plaintiffs for clarification that fact witness affidavits will be admissible as evidence at trial without regard to hearsay.

Plaintiff Common Cause supports and joins in the *Harper* Plaintiffs' motion for the reasons stated therein. Plaintiff Common Cause also represents, in support of that motion, that it intends to submit fact witness affidavits that, if admitted, will serve judicial efficiency and facilitate the Court's consideration of a voluminous record. For example, one intended fact witness affidavit will provide a summary including specific time stamp and screen shot information from the video evidence of the drawing of state legislative and congressional districts at the public terminals. There were 10 live-stream cameras running more than 40 hours per week. If the Court were to need to watch the entirety of all of those videos, it would be unnecessarily cumbersome and time-

consuming, and could not possibly be done in 9 hours of Plaintiffs' trial time. This fact affidavit will provide an efficient method for the Court to reference the evidence in the public record of map-drawing. Plaintiff Common Cause has agreed to make this affiant available for a deposition and, if needed, available for testimony at trial, and thus there is no prejudice to Legislative Defendants by allowing this fact affidavit into evidence.

Likewise, Plaintiff Common Cause intends to submit an affidavit with race data directly from the United States Census Bureau that is available through Maptitude, the software that the North Carolina General Assembly used. That information could be generated by Legislative Defendants in mere minutes and is incontrovertibly accurate data. The parties may still be able to stipulate to that data, even if disputing the relevance, by December 31, the deadline for submission of initial stipulations. But because of the later deadline for initial stipulations, it is necessary to submit this fact affidavit to preserve Plaintiff Common Cause's right to enter into evidence the race data that has been a part of every decennial redistricting cycle in North Carolina for decades until this one.

With respect to the arguments set forth by Legislative Defendants in their Opposition to the *Harper* Plaintiffs' Motion for Clarification, Plaintiff Common Cause makes two points:

*First*, neither the *Harper* Plaintiffs, nor Plaintiff Common Cause in its joinder, seek to have this Court totally abandon a body of evidentiary doctrine—far from it. This case presents exceptional circumstances, no doubt, and Plaintiffs are striving to provide the Court with the evidence it needs to make a full determination on the merits by January 11. Recognizing the challenge inherent in that, Plaintiffs seek to provide the Court with a small number of affidavits that will make navigating the large record more manageable. What the *Harper* Plaintiffs proposed—and Common Cause joins—is a rule that if affiants are made available for deposition,

their affidavits come in. That is an evenhanded, sensible rule that is easily administrable, well suited to the timeframe under which this matter must be decided and does not require the Court to make subjective evaluations on the content of affidavits.<sup>1</sup> That being said, Common Cause still hopes to cooperatively work with Legislative Defendants to move as much of the fact witness affidavit material into stipulations as possible, but if those efforts are unsuccessful, it will be too late on December 31 to totally revise trial witness planning and ordering.

*Second*, Legislative Defendants' argument for delay will only make this Court's job more difficult. Legislative Defendants argue that "[a]ny clarification on the scope of admissibility of such evidence should be deferred until after December 23 and after the parties have had the opportunity to meet and confer about the evidence in question." Leg. Def. Br. in Opp. at 1. The parties will continue to meet and confer, but while conducting discovery and preparing for a trial that is set to start 13 days from today. This clarification is not premature: this clarification will affect which witnesses all parties want to call at trial and given all that needs to be done to present the evidence to the Court in the most prepared, thorough manner, it is important that the parties know now whether these affidavits will be admitted.

For these reasons, Plaintiff Common Cause respectfully joins in the *Harper* Plaintiffs' Motion for Clarification and requests that the Court allow the admission of certain fact witness affidavits as requested in the *Harper* Plaintiffs' motion.

Respectfully submitted this 21<sup>st</sup> day of December, 2021.



Allison J. Riggs (State Bar No. 40028)  
[allison@southerncoalition.org](mailto:allison@southerncoalition.org)  
Hilary H. Klein (State Bar No. 53711)

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<sup>1</sup> To be clear, Plaintiff Common Cause never made a request that the entire matter be tried on the papers.

[hilaryhklein@scsj.org](mailto:hilaryhklein@scsj.org)

Mitchell Brown (State Bar No. 56122)

[Mitchellbrown@scsj.org](mailto:Mitchellbrown@scsj.org)

Katelin Kaiser (State Bar No. 56799)

[Katelin@scsj.org](mailto:Katelin@scsj.org)

Jeffrey Loperfido (State Bar No. 52939)

[jeffloperfido@scsj.org](mailto:jeffloperfido@scsj.org)

SOUTHERN COALITION FOR SOCIAL JUSTICE

1415 W. Highway 54, Suite 101

Durham, NC 27707

Telephone: 919-323-3909

Facsimile: 919-323-3942

J. Tom Boer\* (D.C. Bar No. 469585;

CA Bar. No. 199563)

[tom.boer@hoganlovells.com](mailto:tom.boer@hoganlovells.com)

Olivia T. Molodanof\* (CA Bar No.

328554)

[olivia.molodanof@hoganlovells.com](mailto:olivia.molodanof@hoganlovells.com)

\* Admitted *Pro Hac Vice*

HOGAN LOVELLS US LLP

3 Embarcadero Center, Suite 1500

San Francisco, California 94111

Telephone: 415-374-2300

Facsimile: 415-374-2499

*Counsel for Plaintiff Common Cause*

## CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day submitted a copy of the foregoing document in the above titled action by mail and/or electronic mail, in the manner requested, to the following parties:

Sam Hirsch  
Jessica Ring Amunson  
Kali Bracey  
Zachary C. Schuaf  
Karthik P. Reddy  
Urja Mittal  
JENNER & BLOCK LLP  
1099 New York Avenue, NW, Suite 900  
Washington, D.C. 20001  
[shirsch@jenner.com](mailto:shirsch@jenner.com)  
[zschauf@jenner.com](mailto:zschauf@jenner.com)

Stephen D. Feldman  
ROBINSON, BRADSHAW & HINSON, P.A.  
434 Fayetteville Street, Suite 1600  
Raleigh, NC 27501  
[sfeldman@robinsonbradshaw.com](mailto:sfeldman@robinsonbradshaw.com)

Adam K. Doerr  
ROBINSON, BRADSHAW & HINSON, P.A.  
101 North Tryon Street, Suite 1900  
Charlotte, NC 28246  
[adoerr@robinsonbradshaw.com](mailto:adoerr@robinsonbradshaw.com)

Erik R. Zimmerman  
ROBINSON, BRADSHAW & HINSON, P.A.  
1450 Raleigh Road, Suite 100  
Chapel Hill, NC 27517  
[ezimmerman@robinsonbradshaw.com](mailto:ezimmerman@robinsonbradshaw.com)

*Counsel for North Carolina League of  
Conservation Voters, INC., et al. Plaintiffs*

Burton Craige  
Narendra K. Ghosh  
Paul E. Smith  
PATTERSON HARKAVY LLP  
100 Europa Dr., Suite 420  
Chapel Hill, NC 27517  
[bcraige@pathlaw.com](mailto:bcraige@pathlaw.com)  
[nghosh@pathlaw.com](mailto:nghosh@pathlaw.com)  
[psmith@pathlaw.com](mailto:psmith@pathlaw.com)

Lalitha D. Madduri  
Jacob D. Shelly  
Graham W. White  
ELIAS LAW GROUP LLP  
10 G. Street NE, Suite 600  
Washington, D.C. 20002  
[MElias@elias.law](mailto:MElias@elias.law)  
[ABranch@elias.law](mailto:ABranch@elias.law)  
[LMadduri@elias.law](mailto:LMadduri@elias.law)  
[JShelly@elias.law](mailto:JShelly@elias.law)  
[GWhite@elias.law](mailto:GWhite@elias.law)

Abha Khanna  
ELIAS LAW GROUP LLP  
1700 Seventh Avenue, Suite 2100  
Seattle, Washington 98101  
[AKhanna@elias.law](mailto:AKhanna@elias.law)

Elisabeth S. Theodore  
R. Stanton Jones  
Samuel F. Callahan  
ARNOLD AND PORTER KAYE SCHOLER LLP  
601 Massachusetts Avenue NW  
Washington, DC 20001  
[elisabeth.theodore@arnoldporter.com](mailto:elisabeth.theodore@arnoldporter.com)

*Counsel for Rebecca Harper, et al. Plaintiffs*

Phillip J. Strach  
Thomas A. Farr  
Alyssa M. Riggins  
NELSON MULLINS RILEY & SCARBOROUGH  
LLP  
4140 Parklake Avenue, Suite 200  
Raleigh, North Carolina 27612  
[phillip.strach@nelsonmullins.com](mailto:phillip.strach@nelsonmullins.com)  
[tom.farr@nelsonmullins.com](mailto:tom.farr@nelsonmullins.com)  
[alyssa.riggins@nelsonmullins.com](mailto:alyssa.riggins@nelsonmullins.com)

Mark E. Braden  
Katherine McKnight  
Richard Raile  
BAKER HOSTETLER LLP  
1050 Connecticut Ave NW  
Suite 1100  
Washington, DC 20036  
[mBraden@bakerlaw.com](mailto:mBraden@bakerlaw.com)  
[kmcknight@bakerlaw.com](mailto:kmcknight@bakerlaw.com)  
[rraile@bakerlaw.com](mailto:rraile@bakerlaw.com)

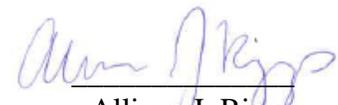
*Counsel for Legislative Defendants*

This the 21<sup>st</sup> day of December, 2021.

Terence Steed  
Special Deputy Attorney General  
Stephanie A. Brennan  
Special Deputy Attorney General  
Amar Majmundar  
Senior Deputy Attorney General

NC DEPARTMENT OF JUSTICE  
P.O. Box 629  
Raleigh, NC 27602  
[tsteed@ncdoj.gov](mailto:tsteed@ncdoj.gov)  
[sbrennan@ncdoj.gov](mailto:sbrennan@ncdoj.gov)  
[amajmundar@ncdoj.gov](mailto:amajmundar@ncdoj.gov)

*Counsel for the State Defendants*



Allison J. Riggs  
Southern Coalition for Social Justice