

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.

Filed this the 27th day of December, 2021
with the Honorable A. Graham Shirley Pursuant
to Rule 5(e) of the North Carolina Rule of Civil
Procedure



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 HARPER PLAINTIFFS' MOTION TO COMPEL RESPONSES TO
SECOND SET OF INTERROGATORIES AND FIRST SET OF REQUESTS FOR
PRODUCTION**

THIS MATTER came before the undersigned three-judge panel upon Harper Plaintiffs' Motion to Compel submitted to the Court on December 27, 2021¹ pursuant to Rule 37 of the North Carolina Rules of Civil Procedure.

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 31, 2021, to complete discovery in advance of trial, which is set to commence on January 3, 2022.

On December 20, 2021, this Court entered an order clarifying that NCLCV Plaintiffs would be required to identify any and all persons who took part in drawing or participated in the computerized production of NCLCV Plaintiffs' Optimized Maps, that NCLCV Plaintiffs were to produce to Legislative Defendants the method and means by which the Optimized Maps were formulated and produced, including, but not limited to all source code, source data, input parameters, and all outputted data associated with the Optimized Maps, and that NCLCV Plaintiffs were to identify any and all persons who took part in drawing or participated in the computerized production of the Optimized Maps. On December 21, 2021,

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

Harper Plaintiffs requested this same information from Legislative Defendants through interrogatories and requests for production of documents issued, respectively, pursuant to Rules 33 and 34 of the North Carolina Rules of Civil Procedure. Harper Plaintiffs specifically requested this information and documentation as it pertains to the Enacted Plans, including the identification of all persons who took part in the drawing of the Enacted Plans in any way as well as all documents or data relied upon by those involved in the map drawing process.

On December 24, 2021, this Court entered a Protective Order acknowledging assertions of legislative privilege by four of the named Legislative Defendants—President *Pro Tempore* Philip E. Berger, Senator Warren Daniel, Senator Paul Newton, and Speaker Timothy K. Moore—and ordering that those four legislators not be called to testify at depositions noticed by Harper Plaintiffs. In that same Order, this Court noted that nothing in the Order should be construed as a limitation on the ability of Representative Hall or Senator Hise to waive their personal legislative privilege and testify at deposition or at trial. Representative Hall’s deposition was scheduled for December 27, 2021, at a time prior to the entry of this order, and Senator Hise’s deposition is scheduled for December 28, 2021.

Harper Plaintiffs and Legislative Defendants have informed the Court of their respective positions on the Motion, and the matter is now ripe for resolution by the Court.

Harper Plaintiffs’ Motion to Compel

After considering the Motion and the responses to that motion, as well as the matters contained therein, the Court, in its discretion, rules upon Harper Plaintiffs’ Motion as follows:

“Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party.” N.C.G.S. § 1A-1, Rule 26(b)(1). “The test for relevance for discovery purposes only requires that information be ‘reasonably’ calculated to lead to the discovery of admissible evidence.” *Lowd v. Reynolds*,

205 N.C. App. 208, 214, 695 S.E.2d 479, 483 (2010) (quoting N.C.G.S. § 1A-1, Rule 26(b)(1)). “[O]rders regarding discovery are within the discretion of the trial court.” *Dworsky v. Travelers Ins. Co.*, 49 N.C. App. 446, 448, 271 S.E.2d 522, 523 (1980).

Rules 33(a) and 34(b) of the North Carolina Rules of Civil Procedure provide that a party upon whom an interrogatory or request for production of documents has been served must serve answers and objections, if any, within thirty days after service; however “[t]he court may allow a shorter or longer time.” N.C.G.S. §§ 1A-1, Rules 33(a) and 34(b). As to answers to interrogatories in particular, such answers must be set forth “separately and fully in writing under oath, unless it is objected to[.]” N.C.G.S. § 1A-1, Rule 33(a). Furthermore, the party submitting the interrogatories or requests for production of documents may move for an order under Rule 37(a) with respect to any objection, failure to answer or respond, or any failure to permit inspection as requested. *Id.*; see N.C.G.S. § 1A-1, Rule 37(a) (“A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery”).

The information and documents Harper Plaintiffs seek to obtain through the propounded interrogatories and requests for production are relevant to the claims asserted by Harper Plaintiffs as well as defenses asserted by Legislative Defendants. Indeed, the information and documentation pertaining to the Enacted Plans, including the identification of all persons who took part in the drawing of the Enacted Plans in any way as well as all documents or data relied upon by those involved in the map drawing process, goes to the heart of the dispute in this redistricting litigation.

Furthermore, the Court has provided for an expedited discovery schedule in these consolidated actions such that a response must be made to Harper Plaintiffs’ interrogatories and requests for production at issue in the Motion to Compel within a shorter period of time than that provided by default under Rules 33 and 34. Accordingly, the Court, on its own

motion, will require Legislative Defendants to answer Harper Plaintiffs' discovery requests before the close of discovery on December 31, 2021.

Conclusion

WHEREFORE, the Court, for the reasons stated herein and in the exercise of its discretion, hereby ORDERS that Harper Plaintiffs' Motion to Compel is GRANTED and Legislative Defendants shall respond to Harper Plaintiffs interrogatories and requests for production at issue in the present Motion. Furthermore, on the Court's own motion and in the exercise of its discretion, hereby ORDERS that Legislative Defendants shall respond by 9:00 AM EST on December 28, 2021.

Nothing in this Order shall be construed as a limitation on Legislative Defendants' ability to assert objections to the discovery requests, including any valid and available privilege assertions. Legislative Defendants, however, are reminded of parties' obligations under Rule 26(b)(5)(a) of the Rules of Civil Procedure when withholding information otherwise discoverable by claiming that the information is privileged or subject to protection from production.

SO ORDERED, this the 27 day of December, 2021.



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 27 day of December 2021.

/s/ Kellie Z. Myers _____
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