

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.

**NCLCV PLAINTIFFS' RESPONSE  
TO LEGISLATIVE DEFENDANTS'  
MOTION TO SEAL**

The NCLCV Plaintiffs hereby respond to the Legislative Defendants' Motion to Seal Their Motion for Clarification.

The Motion to Seal asks the Court to seal the Motion for Clarification pursuant to the Protective Order. It does so because the Motion for Clarification describes, and includes as an attachment, a December 23, 2021 cover letter (the "Cover Letter") that the NCLCV Plaintiffs designated as confidential because it contains sensitive and proprietary information. The Motion simultaneously asserts, however, that the NCLCV Plaintiffs "improper[ly]" designated the Cover Letter as confidential. Mot. 4. It thus invites the Court to deny the Motion as "moot." *Id.* at 6.

The Legislative Defendants are wrong that the Cover Letter does not contain confidential information. At the outset, however, the NCLCV Plaintiffs emphasize that they do not believe that any of the information *contained in the body of the Legislative Defendants' Motion for Clarification, and in the Alternative, Motion to Compel*—as opposed to the Cover Letter attached

to that motion—is confidential or need be sealed. That is, the NCLCV Plaintiffs agree that the Motion for Clarification may enter the public record, including its discussion of Mr. Hirsch related to the NCLCV Demonstrative Maps. Indeed, the NCLCV Plaintiffs filed their own Motion for Protective Order this morning publicly and did not seek that similar information be sealed. Instead, the NCLCV Plaintiffs direct their arguments here solely to the proposition that the Cover Letter itself is properly sealed.

The Cover Letter was properly designated as confidential. *See* G.R.P., Rule 27(b)(2)(b). As the Legislative Defendants concede, “proprietary materials” including “source codes or scripts” are properly designated as confidential and filed, if at all, only under seal. Mot. 4. This Court recognized the same thing in issuing its Protective Order. Dec. 15, 2021 Order at 6 (“Protective Orders ... are ‘essential to the efficient functions of the discovery process’ in cases involving confidential information” (citing *Longman v. Food Lion, Inc.*, 186 F.R.D. 331, 333 (M.D.N.C. 1999))). And here, the Cover Letter outlined the method and means by which the NCLCV Demonstrative Maps were produced (consistent with this Court’s December 20, 2021 Order), including several pages of detailed description of that method and means. That includes the mathematical processes that were employed to create those maps. The Cover Letter also detailed six categories of documents and code files that the NCLCV Defendants were producing, which provided further details on the method and means employed to create the maps. And it identified the non-testifying consulting experts who worked with Mr. Hirsch in anticipation of litigation on the computerized production of the NCLCV Demonstrative Maps. No public interest supports publicly identifying those non-testifying consulting experts. *See* G.R.P., Rule 27(b)(2)(a)-(b); *cf.* *Mack v. Moore*, 91 N.C. App. 478, 483, 372 S.E.2d 314, 317 (1988) (holding that the identity of non-testifying consulting experts is not discoverable).

Given the NCLCV Plaintiffs' view that the Cover Letter contains confidential information, but that the information described in the body of the Legislative Defendants' Motion for Clarification (and the NCLCV Plaintiffs' Motion for Protective Order) is not confidential, the NCLCV Plaintiffs propose to proceed as follows:

(1) The NCLCV Plaintiffs will provide a public version of the Cover Letter that discloses the general information described in the body of the Legislative Defendants' Motion for Clarification and the NCLCV Plaintiffs' Motion for Protective Order but redacts the remainder.

(2) Because the full unredacted version of the Cover Letter will continue to contain confidential information, that document should remain under seal indefinitely, as no reasonable alternative exists to sealing the document. *See* G.R.P., Rule 27(b)(2)(c), (e).

(3) Pursuant to the designation of the Cover Letter as Confidential (but not Highly Confidential), the sealed and unredacted version may be accessible to the parties (not just counsel of record). *See* G.R.P., Rule 27(b)(2)(d).

Dated: December 29, 2021

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Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon each of the parties to this action by electronic mail to counsel at the e-mail addresses indicated below, in accordance with North Carolina Rule of Civil Procedure 5(b)(1)(a):

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This 29th day of December, 2021.

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