STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 19- CVS-012667

REBECCA HARPER, *et al.*,
Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS[1], in his official capacity as Senior Chairman of the House Select Committee on Redistricting, et al.,
Defendants.

MOTION FOR EXPEDITED RESOLUTION

COME NOW Legislative Defendants, Senator Ralph Hise, in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting; Senator Warren Daniel, in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting and Elections; Senator Paul Newton, in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting and Elections; Speaker of the North Carolina House of Representatives Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives; and President Pro Tempore of the North Carolina Senate Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate; and Destin Hall in his Official Capacity as Chair of the House Standing Committee on Redistricting ("Legislative Defendants"), by and through undersigned counsel, and move this court to expedite the resolution of their Motion to

[1] As discussed in further detail below, Plaintiffs filed this suit over two years ago challenging a different North Carolina Congressional district plan. In the significant intervening time between the filing of the suit and today, North Carolina has gained a Congressional district, passed new plans according to new census data, and Destin Hall is now the Chair of the House Committee on Redistricting. These changes are just some of the reasons Plaintiffs' suit is moot, and Plaintiffs should have to file a new suit, naming the appropriate parties, with the proper facts.

Transfer to a properly constituted three-judge panel pursuant to N.C. Gen. Stat. § 1-267.1. In support of this motion, Legislative Defendants state the following:

1. On November 5, 2021, Plaintiffs' filed a motion for leave to file a so-called "Supplemental Complaint" to challenge North Carolina's new Congressional plan in a clearly moot matter challenging North Carolina's previous Congressional Plans. In fact, nothing has been filed in this case in over a year, and Legislative Defendants' renewed motion for Summary Judgment has been pending since May 19, 2020. In the interim, the North Carolina General Assembly has enacted new Congressional Plans utilizing new criteria and new census data. Judge Hinton, an original member of this panel, also retired after thirty years of public service.

2. Even assuming *arguendo* that Plaintiffs' "Supplemental Complaint" is a valid and appropriate pleading, it contains a direct challenge to the validity of the 2021 Congressional Plan ("2021 Plan") and, for the reasons set forth in Legislative Defendants' Motion to Transfer filed contemporaneously with this motion, that challenge must be heard and determined by a new three-judge panel. See N.C. Gen. Stat. § 1-267.1.

3. Legislative Defendants' Motion to Transfer should be heard on an expedited basis. As Plaintiffs' own motion to expedite makes clear, candidate filing in North Carolina begins in less than 30 days. While Plaintiffs attempt to argue that Legislative Defendants intentionally enacted a Congressional plan to "frustrate attempts at judicial review" nothing could be further from the truth. Despite delays with the federal census data, Legislative Defendants conducted public hearings, both before and after draft maps were produced, and still were able to enact Legislative and Congressional districting plans more than a month before the candidate filing period opens.

4. All of the relief sought by Plaintiffs in their "Supplemental Complaint" and allegedly forthcoming motion for preliminary injunction, including the declaratory and injunctive relief must be heard by a three-judge panel. *See* N.C. Gen. Stat. § 1-267.1 ("any action" that challenges the validity of redistricting matters "shall be heard" by a "three-judge panel.") But, instead of properly filing a new suit to challenge North Carolina's new congressional districts, drawn by different actors, utilizing different criteria and census data, Plaintiffs waste judicial resources and precious time trying to game the system by couching their challenge to the 2021 Plan as being "supplemental" to their previous, long moot, challenge to the 2016 Congressional Plan ("2016 Plan"). Plaintiffs' action forces all parties to litigate whether the matter can be heard by two of the three members of the previous panel, or whether a new panel must be convened. This issue must be resolved before any rulings can be made on Plaintiffs' motion for leave to file a supplemental complaint, or certainly on Plaintiff's forthcoming motion for preliminary injunction. Otherwise, Plaintiffs' claims for relief will not be properly heard pursuant to N.C. Gen. Stat. § 1-267.1.

5. In an effort to resolve these disputes prior to the looming candidate filing deadline, Legislative Defendants request that the Court expeditiously enter an order on Legislative Defendants' Motion to Transfer, or in the alternative that Judge Ridgeway notify the Chief Justice of this new challenge to the 2021 Plan so that the Chief Justice can comply with his obligation to appoint the panel.

WHEREFORE, Legislative Defendants request an expedited determination on Legislative Defendants' Motion to Transfer filed contemporaneously with this motion.

Respectfully submitted this the 10th day of November, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served on the parties via email at:

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