

STATE OF NORTH CAROLINA

COUNTY OF WAKE

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

COMMON CAUSE,
Plaintiff-Intervenor,

v.

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

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 015426

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STATE OF NORTH CAROLINA

COUNTY OF WAKE

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.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 500085

ORDER ON SUBMISSION OF REMEDIAL PLANS FOR COURT REVIEW

THIS MATTER is presently in the remedy phase of the litigation following the Order entered by the Supreme Court of North Carolina on February 4, 2022.

On January 11, 2022, this Court entered a Final Judgment wherein this Court upheld the constitutionality of the 2021 Enacted State Legislative and Congressional redistricting plans (hereinafter "Enacted Plans") and ordered that the candidate filing period for the 2022

primary and municipal elections be set to resume at 8:00 A.M. on February 24, 2022, and continue through 12:00 noon on March 4, 2022.

Thereafter, Harper Plaintiffs, North Carolina League of Conservation Voters Plaintiffs, and Plaintiff-Intervenor Common Cause (hereinafter collectively referred to as “Plaintiffs”) appealed this Court’s Judgment directly to the Supreme Court of North Carolina. On February 4, 2022, the Supreme Court of North Carolina entered an Order, with opinion to follow, adopting in full this Court’s findings of fact in the January 11, 2022, Judgment; however, the Supreme Court concluded that the Enacted Plans are unconstitutional under N.C. Const., art. I, §§ 10, 12, 14, and 19 and remanded the action to this Court for remedial proceedings.

The Supreme Court’s Order requires the submission to this Court of remedial state legislative and congressional redistricting plans that “satisfy all provisions of the North Carolina Constitution” (hereinafter referred to as “Proposed Remedial Plans”); both the General Assembly, and any parties to this action who choose to submit Proposed Remedial Plans for this Court’s consideration, must submit such Proposed Remedial Plans on or before February 18, 2022, at 5:00 p.m. SCONC Order ¶ 9. Following an expedited review and comment period in which parties may file and submit to this Court comments on any submitted plans by February 21, 2022, this Court must approve or adopt constitutionally-compliant remedial plans by noon on February 23, 2022.

In order to comport with the timelines established by the Supreme Court of North Carolina, and ensure that the conditions of the Supreme Court’s Order are met, this Court, in its discretion and in furtherance of its review of any Proposed Remedial Plans enacted by the General Assembly or submitted to this Court for selection, hereby ORDERS the following:

1. Notwithstanding the General Assembly having the opportunity to draw Remedial Plans in the first instance and due to the expedited timeline for the Court’s review

of any Proposed Remedial Plans, the Court, by subsequent Order, will promptly appoint a Special Master.

- a. The purpose of the appointed Special Master will be to 1) assist the Court in reviewing any Proposed Remedial Plans enacted and submitted by the General Assembly or otherwise submitted to the Court by a party to these consolidated cases; and 2) assist the Court in fulfilling the Supreme Court's directive to this Court to develop remedial maps based upon the findings in this Court's Judgment should the General Assembly fail to enact Proposed Remedial Plans compliant with the Supreme Court's Order within the time allowed.
- b. No later than 5:00 P.M. on February 9, 2022, the parties may submit to the Court names and qualifications of suggested Special Masters.
- c. The Court will thereafter appoint a Special Master by subsequent order of this Court. Such order will provide further instruction on, among other things, the data sets and files for the Proposed Remedial Plans to be submitted to the Court that will be necessary for the Special Master to assist the Court.
- d. All materials submitted to the Court pertaining to any Proposed Remedial Maps will be required to be served upon the Special Master contemporaneously when submitting the materials to the Court.

2. On February 18, 2022, in addition to submitting Proposed Remedial Plans to the Court as ordered by the Supreme Court, the General Assembly, and any party to this action submitting a Proposed Remedial Plan that it wishes for this Court to consider for selection, shall contemporaneously include in writing with its submission of Proposed Remedial Plans the information the Supreme Court has set forth in its Order pertaining to redistricting plans in general and the ordered Proposed Remedial Plans specifically. This written submission shall provide an explanation of the data and other considerations the mapmaker relied upon to create the submitted Proposed Remedial Plan and to determine that the Proposed Remedial Plans are constitutional (*i.e.*, compliant with the Supreme Court's Order), including but not limited to the following information:

- a. The results of the required initial assessment of whether a racially polarized voting analysis requires the drawing of a district in an area of the state to comply with Section 2 of the Voting Rights Act. SCONC Order ¶ 8.

- b. Whether the mapmaker adhered to traditional neutral districting criteria—specifically including the “drawing of single-member districts which are as nearly equal in population as practicable, which consist of contiguous territory, which are geographically compact, and which maintain whole counties”—and an explanation as to how the mapmaker did so without “subordinat[ing] them to partisan criteria. SCONC Order ¶¶ 6, 8. Such information may include the manner in which, within a redrawn state legislative county grouping, any traversal of county lines is authorized by *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*; the efforts, if any, undertaken to draw districts in the Proposed Remedial Plans that improve the compactness of the districts as well as the values used as to the criteria of compactness; the efforts undertaken, if any, to draw state legislative districts in the Proposed Remedial Plans that split fewer precincts, or voting districts (VTDs); the manner in which municipal boundaries were considered when drawing the districts in the Proposed Remedial Plans.
- c. Whether the mapmaker considered incumbency protection and, if so, an explanation as to how “it is applied even handedly, is not perpetuating a prior unconstitutional redistricting plan, and is consistent with the equal voting power requirements of the state constitution.” SCONC Order ¶ 7. Such information may include the identity of the incumbent(s) for whom the plan was altered to avoid pairing incumbents in the same district, why a specific incumbent was protected, and what efforts were taken to not pair incumbents unduly in the same district.
- d. Whether there is a meaningful partisan skew that necessarily results from North Carolina’s unique political geography. SCONC Order ¶ 6.
- e. What methods were employed in evaluating the partisan fairness of the plan—e.g., “mean-median difference analysis, efficiency gap analysis, close-votes, close seats analysis, and partisan symmetry analysis”—as partisan fairness is defined in Paragraph 5 of the Order. SCONC Order ¶ 6.
- f. Whether the statistical metrics indicate a “significant likelihood that the districting plan will give the voters of all political parties substantially equal opportunity to translate votes into seats across the plan.” SCONC Order ¶ 6.

3. The General Assembly through Legislative Defendants, and any party to this action submitting a Proposed Remedial Plan for the Court’s possible selection, shall also contemporaneously provide the following information with the submitted Proposed Remedial Plan and the required written submission detailed above:

- a. A description of and explanation for the choice of a base map to begin the redrawing process for the Proposed Remedial Plans, as well as any

amendments or changes considered, whether adopted or not, and made thereto, and any alternative maps considered by the mapmakers. For the General Assembly, this shall also include any alternative maps considered by the Senate Committee on Redistricting and Elections, House Committee on Redistricting, or the General Assembly as a whole.

- b. In addition to the partisan analysis required by the Supreme Court's Order or this Order, the extent to which partisan considerations and election results data were a factor in the drawing of the Proposed Remedial Plans.
- c. The identity of all participants involved in the process of drawing the Proposed Remedial Plans submitted to the Court.

4. All materials required to be submitted to this Court by the Supreme Court's Order or this Order shall be submitted as provided in paragraph 3 of the December 13, 2021, Case Scheduling Order.

- 5. This Order is subject to supplementation through further Orders of the Court.

SO ORDERED, this the 8 day of February, 2022.



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:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Harper Plaintiffs

Stephen D. Feldman
Adam K. Doerr
Erik R. Zimmerman
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
adoerr@robinsonbradshaw.com
ezimmerman@robinsonbradshaw.com
Counsel for NCLCV Plaintiffs

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Jeffrey Loperfido
SOUTHERN COALITION FOR
SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org
jeffloperfido@scsj.org
Counsel for Common Cause Plaintiff-Intervenor

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
John E. Branch, III
NELSON MULLINS RILEY &
SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Phillip.strach@nelsonmullins.com
Tom.farr@nelsonmullins.com
Alyssa.riggins@nelsonmullins.com
John.Branch@nelsonmullins.com
Counsel for Legislative Defendants

Terence Steed
Amar Majmundar
Stephanie A. Brennan
NORTH CAROLINA DEPARTMENT
OF JUSTICE
Post Office Box 629
Raleigh, NC 27602
tsteed@ncdoj.gov
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
Counsel for State Board Defendants

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 8th day of February 2022.

/s/ Kellie Z. Myers
Kellie Z. Myers
Trial Court Administrator
10th Judicial District
Kellie.Z.Myers@nccourts.org