

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

DAN BISHOP,

Plaintiff,

v.

AMY L. FUNDERBURK, in her capacity as Clerk of the Supreme Court of North Carolina; PAUL NEWBY, in his capacity as Chief Justice of North Carolina; ROBIN HUDSON, SAMUEL L. ERVIN IV, MICHAEL MORGAN, ANITA EARLS, PHILIP BERGER, JR., and TAMARA BARRINGER, in their respective capacities as Associate Justices of the Supreme Court of North Carolina; EUGENE H. SOAR, in his capacity as Clerk of the North Carolina Court of Appeals; DONNA STROUD, in her capacity as Chief Judge of the North Carolina Court of Appeals; and CHRIS DILLON, RICHARD DIETZ, JOHN TYSON, LUCY INMAN, VALERIE ZACHARY, HUNTER MURPHY, JOHN ARROWOOD, ALLEGRA COLLINS, TOBY HAMPSON, JEFFERY CARPENTER, APRIL WOOD, FRED GORE, JEFFERSON GRIFFIN and DARREN JACKSON, in their respective capacities as Judges of the North Carolina Court of Appeals,

Defendants.

Civil Action No. 3:21-cv-679

VERIFIED COMPLAINT

Plaintiff alleges:

NATURE OF ACTION

1. This action seeks to establish a First Amendment right to compel public disclosure of the votes of Justices and Judges of the North Carolina Supreme Court and North Carolina Court of Appeals to suspend the 2022 election.

JURISDICTION AND VENUE

2. This action arises under the First Amendment to the United States Constitution and the Civil Rights Act, 42 U.S.C. §§ 1983, et seq. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question), 1343 (civil rights), § 1361(a) (mandamus) and 2201 (declaratory relief).

3. Venue is proper in this district under 28 U.S.C. § 1391(b) because the events or omissions giving rise to the claim occurred in this district.

PARTIES

4. Plaintiff Dan Bishop is a resident of Mecklenburg County, North Carolina.

5. Defendant Amy L. Funderburk is a resident of North Carolina and Clerk of the North Carolina Supreme Court.

6. Defendant Paul Newby is a resident of North Carolina and the Chief Justice of North Carolina. He is sued solely in respect of administrative acts or inaction.

7. Defendants Robin Hudson, Samuel L Ervin IV, Michael Morgan, Anita Earls, Philip Berger Jr., and Tamara Barringer are residents of North Carolina and

Associate Justices of the North Carolina Supreme Court. They are sued solely in respect of administrative acts or inaction.

8. Defendant Eugene H. Soar is a resident of North Carolina and Clerk of the North Carolina Court of Appeals.

9. Defendant Donna Stroud is a resident of North Carolina and Chief Judge of the North Carolina Court of Appeals. She is sued solely in respect of administrative acts or inaction.

10. Defendants Chris Dillon, Richard Dietz, John Tyson, Lucy Inman, Valerie Zachary, Hunter Murphy, John Arrowood, Allegra Collins, Toby Hampson, Jeffery Carpenter, April Wood, Fred Gore, Jefferson Griffin, and Darren Jackson are residents of North Carolina and judges of the North Carolina Court of Appeals. They are sued solely in respect of administrative acts or inaction.

FACTUAL ALLEGATIONS

Anonymous Court Orders Suspend and Delay Primary Elections

11. Bishop is the incumbent member of the United States House of Representatives representing the Ninth District of North Carolina.

12. Bishop intends to be a candidate for reelection in the 2022 primary.

13. Bishop made substantial preparations to campaign and compete in the primary election as scheduled by state law on March 8, 2022.

14. As the last step in preparing, Bishop obtained certification of his Mecklenburg County voter registration and residency at the local board of elections on the opening day of candidate filing established by state law, December 6, 2021,

and, as required by state law for candidates for U.S. House, transmitted a notice of candidacy including such certification and the filing fee of \$1740 by mail to the North Carolina State Board of Elections in Raleigh for filing.

15. After dispatching his notice of candidacy for mailing, Bishop learned from media reports that the North Carolina Court of Appeals had issued an order “to enjoin indefinitely the State Board of Elections from opening of the candidate-filing period for the 2022 primary elections for Congress, the North Carolina Senate, and the North Carolina House of Representatives.”

16. The order was entered by a panel of three North Carolina Court of Appeals judges in Case No. P21-525, captioned *North Carolina League of Conservation Voters, Inc., et al. v. Representative Destin Hall, et al* (hereinafter the “Panel Order”). The Panel Order was signed by Defendant Soar, as clerk, and stated that it was “[b]y order of the Court,” but did not disclose which judge or judges of the court caused it to be issued. A true copy of the order as published on the website of the Court of Appeals is attached as Exhibit A.

17. In response to the Panel Order, the State and County Boards of Elections suspended candidate filing for congressional and state legislative races across the state, including in this judicial district, but opened candidate filing at noon on December 6 in accordance with state statute for all other offices.

18. In the late afternoon of December 6, media reported that the Court of Appeals entered another order (hereinafter the “En Banc Order”) reversing the Panel

Order, such that candidate filing for congressional and state legislative races would proceed.

19. The En Banc Order was issued in the same proceeding, was again signed by Defendant Soar, and without disclosing individual votes of the judges, stated that by “a vote of the majority of judges,” the Court had vacated the Panel Order. A true copy of the En Banc Order as published on the website of the Court of Appeals is attached as Exhibit B.

20. In response to the En Banc Order, the State and County Boards of Elections began accepting candidate filings in all races, including in this judicial district, and continued doing so through Tuesday, December 7 and into Wednesday, December 8.

21. Bishop’s notice of candidacy and filing fee were received by the State Board of Elections on Wednesday, December 8.

22. December 8 brought news that the North Carolina Supreme Court had issued an order not only suspending candidate filings once again — for all races — but also changing the date of North Carolina’s 2022 primary election from March 8 to May 17, 2022.

23. At that time, hundreds or thousands of candidates had already filed.

24. That order was entered in North Carolina Supreme Court Case No. 413P21, captioned *Rebecca Harper et al. v. Representative Destin Hall and North Carolina League of Conservation Voters, Inc. et al. v. Representative Destin Hall*, consolidated (hereinafter the “Supreme Court Order”). It provided, in relevant part:

In light of the great public interest in the subject matter of these cases, the importance of the issues to the constitutional jurisprudence of this State, and the need for urgency in reaching a final resolution on the merits at the earliest possible opportunity, the Court grants a preliminary injunction and temporarily stays the candidate-filing period for the 2022 elections for all offices until such time as a final judgment on the merits of plaintiffs' claims, including any appeals, is entered and a remedy, if any is required, has been ordered.

1. Defendants are hereby enjoined from conducting elections for any public offices in the state on Tuesday, March 8, 2022 and, ... instead are directed to hold primaries for all offices on Tuesday, May 17, 2022.
...

2. Any individual who has already filed to run for public office in 2022 and whose filing has been accepted by the appropriate board of elections, will be deemed to have filed for the same office under the new election schedule for the May 2022 primary unless they provide [sic] timely notice of withdrawal of their [sic] candidacy to the board of elections during the newly-established filing period; and except to the extent that a remedy in this matter, if any, impacts a candidate's eligibility to hold the office for which they have [sic] currently filed. Any individual who has properly withdrawn their [sic] candidacy is free to file for any other office for which they [sic] may be eligible during the reopened filing period.
...

A true copy of the Supreme Court Order as published on the website of the Supreme Court is attached as Exhibit C.

25. Despite the "great public interest" and "importance" acknowledged by the Supreme Court's words, the Supreme Court Order, like the two orders from the Court of Appeals (all three orders hereinafter referred to collectively as the "Election Suspension Orders"), concealed the identities of the justices who voted to issue it. The order bore a single, manuscript signature that was illegible, appearing over the words "For the Court."

26. Upon issuance of the Supreme Court Order, the State and County Boards of Elections suspended all candidate filing, including in this judicial district. The State Board of Elections has retained Bishop's filing fee and acknowledged filing of his notice of candidacy but omitted other usual actions to acknowledge his candidacy.

Public Access Refused

27. On December 9, 2021, Bishop requested from Defendant Funderburk by phone any court record disclosing the votes of the justices on the Supreme Court Order. Funderburk advised that the manuscript signature was Justice Barringer's, as junior associate justice, and that Funderburk "does not have" the votes of the justices. Asked whether she as Clerk has custody of all records of the Court, Funderburk advised that she only has custody of the Clerk's records and that each justice is custodian of his or her own chambers' records.

28. Bishop then made immediate written demand to Funderburk and Barringer for a court record disclosing the votes of the justices on the Supreme Court Order. A true copy of the demand is attached as Exhibit D and incorporated herein by reference.

29. On December 10, 2021, Funderburk responded, reiterating her prior responses. A true copy of Funderburk's email with attachments is attached as Exhibit E and incorporated herein by reference.

30. Neither Justice Barringer nor any other person for the Court responded.

31. On or about December 10, the following notice appeared on the landing page of the e-filing website for the appellate courts (hereinafter the “E-filing Site Notice”):

Various media reports have claimed to have information regarding the identity of the judges serving on the petitions panel for December 2021. Because the identity of the judges on the panel is confidential, the court cannot comment on these media reports. To ensure the confidentiality of the petitions panel and to avoid potential judge-shopping, please be advised that the panel membership has been changed as of December 10th.

32. By the reference to “petitions panel” and the fact that the Supreme Court does not act in panels, Bishop infers that this statement refers to the administrative practices of the Court of Appeals and therefore alleges that that court also has refused media and public inquiries for the votes of the judges in support of and opposition to the Panel Order and En Banc Order.

33. On December 22, 2021, Bishop caused to be hand-delivered and emailed to the clerks and chief judges of both appellate courts a restated demand for timely public access to votes on the several orders alleged, clarifying and expanding the grounds for such demand. This demand is attached as Exhibit F and incorporated herein by reference. Defendants have failed and refused to furnish such access.

Tradition of Public Access

34. For at least 150 years, the North Carolina Supreme Court has continuously disclosed votes of the justices by publishing case reports in the form of signed opinions (including concurrences and dissents). The Court of Appeals has followed the same practice since its establishment in 1967.

35. Pursuant to a Rule of Appellate Procedure promulgated by the Supreme Court, the Court of Appeals renders some of its case decisions by opinions that are not published. N.C.R. App. P. 30(e). These opinions nevertheless identify the votes of the judges and are publicly available, including from the Court's website.

36. Accordingly, there is a well-established tradition of public access to the votes of individual justices and judges in the decisions of these courts.

Departure from Public Access Without Rational Basis

37. On occasional "per curiam" opinions published by the Supreme Court and on other orders issued by both appellate courts to manage appeals or address petitions outside the usual appeal process, such as the Election Suspension Orders, the appellate Courts do not set forth the votes of the justices and judges. In such cases, the appellate courts refuse public access requests for the votes of the justices and judges on these orders. This is an unwritten practice that is without rational basis, and certainly not supported by any compelling governmental interest that cannot be readily accommodated by other means that do not prohibit public access.

38. As the orders alleged above make clear, the distinction between the Election Suspension Orders and opinions that disclose the votes cannot be based on significance to the public interest or the jurisprudence of the State. The Supreme Court Order acknowledges on its face its enormous public and jurisprudential significance. That order — and the Panel Order, before being vacated by the En Banc Order — reversed a December 3 trial court order that denied a preliminary injunction to stop the primary election, which is attached as Exhibit G. Typically, a reversal would come by means of a published opinion disclosing the votes of the justices or

judges. *See, e.g. TSG Finishing, LLC v. Bollinger*, 238 N.C. App. 586, 587, 767 S.E.2d 870, 873 (2014) (Hunter writing for the court, McGee and Bell concurring: “we reverse the trial court’s order and remand with instructions to issue the preliminary injunction”); *see also Setzer v. Annas*, 286 N.C. 534, 541, 212 S.E.2d 154, 158 (1975) (Sharp writing for the court, Copeland and Exum not participating, and Huskins dissenting: “The decision of the Court of Appeals is reversed, and the cause is remanded to that court with the direction to vacate the preliminary injunction ... and [to further remand to the trial court] for a *de novo* hearing on plaintiffs’ motion for preliminary injunction”).

39. Here, without published opinion or any statement of justifying facts or legal reasons, the Supreme Court entered its own, literal “preliminary injunction” stopping the election process even more directly than if it had proceeded via remand and instruction, and with far greater impact upon the public interest than in the typical dispute among private litigants. The Panel Order likewise — despite responding to a “motion for temporary stay” — ordered directly an immediate injunction of candidate filing for legislative offices, with similar public impact.

40. Neither the Supreme Court nor the Court of Appeals has promulgated a policy attempting to articulate any compelling, countervailing governmental interest served by selectively denying public access to judges’ votes.

41. The E-Filing Site Notice alleged in paragraph 31 above may be a *post-hoc* attempt by the Court of Appeals to articulate such an interest but is deficient on its face. It suggests that the identities of judges acting on “petitions” to the court, *i.e.*

outside the ordinary appeal process, must be kept confidential because the three-judge “petitions panel” sits for monthly stints before reassignment, and that revealing their identities would give rise to a risk of “judge-shopping” by other prospective petitioners.

42. It is implausible and speculative that an occasional media report or request from the public incidentally exposing identities of the judges assigned to the current month’s petitions panel would lead to significant judge-shopping. It is likelier that the timing of most petitions to the court is driven by the need for prompt relief. Furthermore, this articulated interest does not justify continuing to conceal the petitions panel judges’ identities after their monthly assignments conclude.

43. In the present case, since the E-Filing Site Notice reveals that “the panel membership has been changed as of December 10th,” the identities of the judges signing the Panel Order can be safely disclosed. And this rationale never furnished justification for concealing the votes on the En Banc Order.

44. The public, including Plaintiff, has a right of access to the votes of justices and judges on the Election Suspension Orders and on all other orders issued.

The Orders Are a Matter of Intense Public Interest.

45. The judges’ votes on the contradictory Election Suspension Orders are of surpassing public significance for all the following reasons:

- a) All North Carolina appellate judges are elected.
- b) Elections for both appellate courts occur in 2022.
- c) One of the Associate Justices of the Supreme Court, Samuel J. Ervin

IV filed his candidacy for re-election before the Supreme Court Order stopped such

filings for others. Two candidates, including a Court of Appeals judge, filed in the opposite party primary for Justice Ervin's current seat and must first compete in a primary to oppose his bid for reelection. Justice Ervin may have provided the deciding vote in favor of the Order. If so, he thereby delayed indefinitely the entry of any competitor from his own political party into the race. He also delayed by two months the primary election of his eventual general-election opponent, thereby reducing the time for head-to-head campaigning against him during general election.

d) Three other Court of Appeals Judges have already filed to be candidates for reelection to the Court of Appeals. Any of the six Court of Appeals Judges may have voted for or against the Panel Order and En Banc Order despite being on the ballot themselves.

e) The Election Suspension Orders come in litigation over new decadal districting maps enacted by the North Carolina General Assembly. The General Assembly drew those maps using highly restrictive procedures imposed by a state court in 2019 to maximize legislative transparency in a previous remedial map-drawing. The state court dictated that the General Assembly must "conduct the entire [redistricting] process in full public view. At a minimum, this requires all map drawing to occur at public hearings, with any relevant computer screen visible to legislators and public observers." *Common Cause v. Lewis*, Case No. 18 CVS 014001, 2019 WL 4569584 at *137 (Wake Cnty. Super. Ct. Sept. 3, 2019); *Harper v. Lewis*, Case No. 19 CVS 012667, 2019 N.C. Super. LEXIS 122 at *24 (Wake Cnty. Super. Ct. Oct. 28, 2019). That state trial court later approved the remedial districts drawn for

the 2020 election, observing that “both the Senate and the House conducted the vast majority of the remedial redistricting process in public hearings, broadcast by audio and video live stream, so that Plaintiffs and interested public could view the process in its entirety.” *Common Cause v. Lewis*, Case No. 18 CVS 014001, slip op. at 3 (Wake Cnty. Super. Ct. Oct. 28, 2019). Ironically, the General Assembly retained these transparency procedures in enacting this year’s new maps, only to see the election process upended again anyway with a series of contradictory orders by state appellate judges who concealed their own identities while doing so.

f) These orders are the latest in an ever increasing, nationwide flood of state and federal litigation throwing election processes into disarray and confusion. North Carolina voters have endured a decade of serial, unrelenting litigation challenges to districting maps, featuring repeated, court-ordered disruptions and threats of disruption to election schedules. Indeed, the 2019 state-court litigation itself reached a resolution on the eve of the scheduled candidate filing, leaving uncertain until then whether the election would proceed and under what maps. But the North Carolina Supreme Court — in another anonymous order, see Exhibit H — refused to adjudicate those plaintiffs’ residual objections to the remedial districting plans during the ensuing two-year interregnum, leaving them to reemerge in new lawsuits to disrupt yet another election.

g) Across the country, the 2020 elections were infamously marred by “a proliferation of pre-election litigation that creates confusion and turmoil,” in the words of Fourth Circuit Judges Wilkinson, Agee and Niemeyer — “385 lawsuits filed

against election rules this year,” threatening to “make a mockery of the Constitution’s explicit delegation ... to the state legislatures” of the power to make election rules. *Wise v. Circosta*, 978 F.3d 93, 105, 116 (4th Cir. 2020) (Wilkinson, Agee and Niemeyer, dissenting).

46. Bishop seeks to obtain the judges’ votes on the Election Suspension Orders in order to further publish and use them in the course of robust First Amendment-protected political debate and discourse concerning these subjects.

47. Any significant delay in access to such documents and information will severely and irreparably impair the usefulness of access and the associated First Amendment-protected interest because of the loss of contemporaneity between the acts of the judges and publication of news thereof. The First Amendment-protected interest will retain no significant value unless the deprivation of access is remedied almost immediately and in any event well prior to the general election 2022.

FIRST CLAIM FOR RELIEF: VIOLATION OF FIRST AMENDMENT RIGHT OF ACCESS

48. The foregoing allegations are incorporated herein by reference as if fully set forth.

49. The First Amendment affords a right of public access to a judicial proceeding or record that has traditionally been open to the press and general public and where public access plays a significant positive role in the functioning of the particular process in question. *See Courthouse News Serv. v. Schaefer*, 2 F.4th 318, 326 (4th Cir. 2021).

50. As alleged above, the votes of individual appellate judges in North Carolina have traditionally been published and thereby open to the press and public. In addition, Article I, Section 18 of the North Carolina Constitution guarantees a qualified public right of access to civil actions, *Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 475-76, 515 S.E.2d 675, 693 (1999), and North Carolina statutory law provides generally for public access to records in all court proceedings, N.C. Gen. Stat. § 7A-109(a), and is supplemented by a far-reaching general public records statute, *id.* §§132-1, et seq. All of this speaks to broad traditional access.

51. Public access to votes of individual appellate judges plays a positive role in the functioning of the judicial process because openness of that process, including appellate litigation, affords citizens a form of legal education and hopefully promotes confidence in the fair administration of justice. *Courthouse News Serv.*, 2 F.4th at 327. Moreover, access allows the public to participate in and serve as a check upon the judicial process — an essential component of our structural self-government. *Id.* This is especially true in North Carolina given that, except for vacancy appointments, all appellate judges are elected by the people. Complete information about the performance of appellate judges must be available to the people in order to inform the people's vote.

52. Accordingly, a qualified first amendment right of public access attaches to records depicting the appellate judges' votes. *Id.* at 326

53. Bishop has properly and effectively invoked the right of public access and is entitled to exercise it.

54. There exists no compelling, countervailing governmental interest in protecting the confidentiality of the appellate judges' votes on the Election Suspension Orders sufficient to justify Defendants' actions and inaction resulting in the denial of prompt access by Bishop. Even if an overriding or compelling interest did exist, there are far less restrictive means of protecting any such interest. Defendants' practices are not narrowly tailored as required by law.

55. Bishop has no adequate remedy at law to prevent or address Defendants' unconstitutional actions and is suffering and will suffer irreparable harm as a result of Defendants' violations of Bishop's First Amendment rights. *Roman Catholic Diocese v. Cuomo*, 141 S. Ct. 63, 67 (2020) (“the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”) (quoting *Elrod v. Burns*, 427 U.S. 347, 343 (1976)).

56. Pursuant to 42 U.S.C. § 1983, Bishop is entitled to declaratory and both preliminary and permanent injunctive relief to remedy and cease the ongoing deprivation of First Amendment rights guaranteed to Bishop.

DEMAND FOR RELIEF

WHEREFORE, Bishop demands judgment against Defendants in their official capacities for the following relief:

1. Mandamus or preliminary and permanent injunctions against Defendants, in their official capacities, including their agents, assistance, successors, employees, and all persons acting in concert or cooperation with them, or at their direction or under their control, prohibiting them permanently from continuing their

policies and practices resulting in denial or delay of access to votes on any matter by a justice or judge of the Supreme Court or Court of Appeals;

2. Declaratory judgment pursuant to 28 U.S.C. § 2201 declaring Defendants' policies and practices that knowingly deny or delay access to votes by a justice or judge of the Supreme Court or Court of Appeals as unconstitutional under the First Amendment to the United States Constitution, for the reason that Defendants' policies and practices constitute an effective denial of a protected right of public access to court processes and records;

3. An award of costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and

4. All other relief to which Bishop is entitled.

This 22nd day of December, 2021.

/s/J. Daniel Bishop
J. Daniel Bishop (N.C. State Bar No. 17333)
2216 Whilden Court
Charlotte, North Carolina 28211
Telephone: (704) 619-7580
E-mail: dan@votedanbishop.com

Attorney for Plaintiff

VERIFICATION

I declare under penalty of perjury under the laws of the United States that foregoing is true and correct.



Dan Bishop



North Carolina Court of Appeals

EUGENE H. SOAR, Clerk

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One West Morgan Street
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(21CVS015426)

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No. P21-525

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, INC.;
HENRY M. MICHAUX, JR.;
DANDRIELLE LEWIS; TIMOTHY
CHARTIER; TALIA FERNÁNDES;
KATHERINE NEWHALL; R. JASON
PARSLEY; EDNA SCOTT; ROBERTA
SCOTT; YVETTE ROBERTS;
JEREANN KING JOHNSON;
REVEREND REGINALD WELLS;
YARBROUGH WILLIAMS, JR.;
REVEREND DELORIS L. JERMAN;
VIOLA RYALS FIGUEROA; AND
COSMOS GEORGE,

PLAINTIFFS,

V.

REPRESENTATIVE DESTIN HALL,
IN HIS OFFICIAL CAPACITY AS CHAIR OF THE
HOUSE STANDING COMMITTEE ON
REDISTRICTING; SENATOR WARREN
DANIEL, IN HIS CAPACITY AS CO-
CHAIR OF THE SENATE STANDING
COMMITTEE ON REDISTRICTING AND
ELECTIONS; SENATOR RALPH E. HISE,
JR., 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; REPRESENTATIVE
TIMOTHY K. MOORE, IN HIS OFFICIAL
CAPACITY AS SPEAKER OF REPRESENTATIVES;
SENATOR PHILIP E. BERGER, IN HIS
OFFICIAL CAPACITY AS PRESIDENT PRO
TEMPORE OF THE NORTH CAROLINA SENATE;
THE STATE OF NORTH CAROLINA;
THE NORTH CAROLINA STATE
BOARD OF ELECTIONS; DAMON
CIRCOSTA, IN HIS OFFICIAL CAPACITY AS
CHAIRMAN OF THE NORTH CAROLINA STATE
BOARD OF ELECTIONS; STELLA
ANDERSON, IN HER OFFICIAL CAPACITY AS
SECRETARY OF THE NORTH CAROLINA STATE
BOARD OF ELECTIONS; JEFF CARMON III,
IN HIS OFFICIAL CAPACITY AS MEMBER OF THE

NORTH CAROLINA STATE BOARD OF ELECTIONS; STACY EGGERS IV, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; TOMMY TUCKER, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; and KAREN BRINSON BELL, IN HER OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS,

DEFENDANTS.

ORDER

The following order was entered:

The motion for temporary stay filed by Plaintiffs on 6 December 2021 is allowed in part to enjoin Defendants from opening of the candidate-filing period for the 2022 primary elections for Congress, the North Carolina Senate, and the North Carolina House of Representatives pending this Court's ruling on Plaintiffs' 'Petition for Writ of Supersedeas or Prohibition.' The period for Defendants to respond to Plaintiffs' petition shall close at 12:00 p.m. on 9 December 2021. A ruling on the petition will be made upon Defendants' filing of their responses or the expiration of the response period if no response is filed.

By order of the Court this the 6th of December 2021.

WITNESS my hand and official seal this the 6th day of December 2021.



Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Mr. Stephen D. Feldman, Attorney at Law, For North Carolina League of Conservation Voters, Inc.
Mr. Erik R. Zimmerman, Attorney at Law, For North Carolina League of Conservation Voters, Inc.
Mr. Thomas A. Farr, Attorney at law, For North Carolina League of Conservation Voters, Inc.
Mr. John E. Branch, III, Attorney at Law, For North Carolina League of Conservation Voters, Inc.
Ms. Alyssa Riggins, Attorney at Law, For North Carolina League of Conservation Voters, Inc.
Mr. Phillip J. Strach, Attorney at Law
Mr. Terence Steed, Assistant Attorney General, For The State of North Carolina Board of Elections
Ms. Stephanie A. Brennan, Special Deputy Attorney General, For The State of North Carolina Board of Elections
Mr. Amar Majmundar, Senior Deputy Attorney General, For The State of North Carolina Board of Elections
Mark E. Braden, For Representative Destin Hall (Chair of the House standing Committee on Redistricting), et al
Katherine Mcknight, For Representative Destin Hall (Chair of the House standing Committee on Redistricting), et al
Richard Raile, For Representative Destin Hall (Chair of the House standing Committee on Redistricting), et al
Hon. Frank Blair Williams, Clerk of Superior Court



North Carolina Court of Appeals

EUGENE H. SOAR, Clerk

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SCOTT; YVETTE ROBERTS;
JEREANN KING JOHNSON;
REVEREND REGINALD WELLS;
YARBROUGH WILLIAMS, JR.;
REVEREND DELORIS L. JERMAN;
VIOLA RYALS FIGUEROA; AND
COSMOS GEORGE,

PLAINTIFFS,

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REPRESENTATIVE DESTIN HALL,
IN HIS OFFICIAL CAPACITY AS CHAIR OF THE
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JR., IN HIS OFFICIAL CAPACITY AS CO-CHAIR
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PAUL NEWTON, IN HIS OFFICIAL
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DEFENDANTS.


ORDER

The following order was entered:

IT IS HEREBY ORDERED, upon a vote of the majority of judges of the Court, that the Court will rehear the above-captioned cause en banc. The panel's order dated 6 December 2021 issuing a temporary stay is vacated and the Plaintiffs' motion for temporary stay is denied. The en banc Court shall promptly rule on the pending Petition for Writ of Supersedeas or Prohibition.

By order of the Court this the 6th of December 2021.

WITNESS my hand and official seal this the 6th day of December 2021.



Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Mr. Stephen D. Feldman, Attorney at Law, For North Carolina League of Conservation Voters, Inc.
Mr. Erik R. Zimmerman, Attorney at Law, For North Carolina League of Conservation Voters, Inc.
Mr. Thomas A. Farr, Attorney at law, For Representative Destin Hall (Chair of the House standing Committee on Redistricting), et al
Mr. John E. Branch, III, Attorney at Law, For Representative Destin Hall (Chair of the House standing Committee on Redistricting), et al
Ms. Alyssa Riggins, Attorney at Law, For Representative Destin Hall (Chair of the House standing Committee on Redistricting), et al
Mr. Phillip J. Strach, Attorney at Law, For Representative Destin Hall (Chair of the House standing Committee on Redistricting), et al
Mr. Terence Steed, Assistant Attorney General, For The State of North Carolina Board of Elections
Ms. Stephanie A. Brennan, Special Deputy Attorney General, For The State of North Carolina Board of Elections
Mr. Amar Majmundar, Senior Deputy Attorney General, For The State of North Carolina Board of Elections
Mark E. Braden, For Representative Destin Hall (Chair of the House standing Committee on Redistricting), et al
Ms. Katherine Mcknight, Attorney at Law, For Representative Destin Hall (Chair of the House standing Committee on Redistricting), et al
Mr. Richard Raile, Attorney at Law, For Representative Destin Hall (Chair of the House standing Committee on Redistricting), et al
Mr. Adam K. Doerr, Attorney at Law, For North Carolina League of Conservation Voters, Inc.
Hon. Frank Blair Williams, Clerk of Superior Court



No. 413P21

TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

REBECCA HARPER; AMY CLARE)
OSEROFF; DONALD RUMPH; JOHN)
ANTHONY BALLA; RICHARD R. CREWS;)
LILY NICOLE QUICK; GETTYS COHEN,)
JR.; SHAWN RUSH; JACKSON THOMAS)
DUNN, JR.; MARK S. PETERS; KATHLEEN)
BARNES; VIRGINIA WALTERS BRIEN; and)
DAVID DWIGHT BROWN)

Plaintiffs,)

v.)

REPRESENTATIVE DESTIN HALL, in his)
official capacity as Chair of the House)
Standing Committee on Redistricting;)
SENATOR WARREN DANIEL, in his official)
capacity as Co-Chair of the Senate Standing)
Committee on Redistricting and Elections;)
SENATOR RALPH HISE, 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; PRESIDENT PRO TEMPORE OF)
THE NORTH CAROLINA SENATE, PHILIP)
E. BERGER; THE NORTH CAROLINA)
STATE BOARD OF ELECTIONS; and)
DAMON CIRCOSTA, in his official capacity)

Defendants.)

NORTH CAROLINA LEAGUE OF)
CONSERVATION VOTERS, INC.; HENRY)
M. MICHAUX, JR.; DANDRIELLE LEWIS;)
TIMOTHY CHARTIER; TALIA FERNÓS;)
KATHERINE NEWHALL; R. JASON)
PARSLEY; EDNA SCOTT; ROBERTA)
SCOTT; YVETTE ROBERTS; JEREANN)
KING JOHNSON; REVEREND REGINALD)
WELLS; YARBROUGH WILLIAMS, JR.;)
REVEREND DELORIS L. JERMAN; VIOLA)
RYALS FIGUEROA; and COSMOS GEORGE)

Plaintiffs,)

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ficial 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; REPRESENTATIVE TIMOTHY)
K. MOORE, in his official capacity as Speaker)
of the North Carolina House of)
Representatives; SENATOR PHILIP E.)
BERGER, in his official capacity as President)
Pro Tempore of the North Carolina Senate;)
THE STATE OF NORTH CAROLINA; THE)
NORTH CAROLINA STATE BOARD OF)
ELECTIONS; DAMON CIRCOSTA, in his)
official capacity as Chairman of the North)
Carolina State Board of Elections; STELLA)
ANDERSON, in her official capacity as)
Secretary of the North Carolina State Board)
of Elections; JEFF CARMON III, in his)
official capacity as Member of the North)

Carolina State Board of Elections; STACY)
EGGERS IV , in his official capacity as)
Member of the North Carolina State Board of)
Elections; TOMMY TUCKER, in his of ficial)
capacity as Member of the North Carolina)
State Board of Elections; and KAREN)
BRINSON BELL, in her official capacity as)
Executive Director of the North Carolina)
State Board of Elections)

ORDER

Plaintiffs' Petitions for Discretionary Review Prior to Determination by the Court of Appeals, Motion to Suspend Appellate Rules to Expedite a Decision, and Motion to Suspend Appellate Rules and Expedite Schedule, filed in these consolidated cases on 6 December 2021 are allowed as follows:

In light of the great public interest in the subject matter of these cases, the importance of the issues to the constitutional jurisprudence of this State, and the need for urgency in reaching a final resolution on the merits at the earliest possible opportunity, the Court grants a preliminary injunction and temporarily stays the candidate-filing period for the 2022 elections for all offices until such time as a final judgment on the merits of plaintiffs' claims, including any appeals, is entered and a remedy, if any is required, has been ordered.

1. Defendants are hereby enjoined from conducting elections for any public offices in the state on Tuesday, March 8, 2022 and, consistent with the response and affidavit

of the North Carolina State Board of Elections, defendants instead are directed to hold primaries for all offices on Tuesday, May 17, 2022. The trial court is authorized to issue any orders necessary to accomplish the resulting changes in the election schedule, including implementing shortened filing periods and other administrative adjustments.

2. Any individual who has already filed to run for public office in 2022 and whose filing has been accepted by the appropriate board of elections, will be deemed to have filed for the same office under the new election schedule for the May 2022 primary unless they provide timely notice of withdrawal of their candidacy to the board of elections during the newly-established filing period; and except to the extent that a remedy in this matter, if any, impacts a candidate's eligibility to hold the office for which they have currently filed. Any individual who has properly withdrawn their candidacy is free to file for any other office for which they may be eligible during the reopened filing period.

3. The trial court is directed to hold proceedings necessary to reach a ruling on the merits of plaintiffs' claims and to provide a written ruling on or before Tuesday, January 11, 2022.

4. Any party wishing to appeal the trial court's ruling must file a Notice of Appeal within two business days of the trial court's ruling, exclusive of weekends and holidays, in the trial court and with this Court, and should expect that an expedited briefing and hearing schedule in this Court will commence immediately thereafter.

The Petition for Writ of Supersedeas and Motion for Temporary Stay are dismissed as moot.

By order of the Court in Conference, this the 8th day of December, 2021.

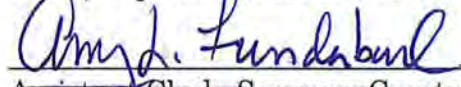


For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 8th day of December, 2021.



AMY L. FUNDERBURK
Clerk, Supreme Court of North Carolina



Assistant Clerk, Supreme Court of
North Carolina

Copy to:

North Carolina Court of Appeals

Mr. Narendra K. Ghosh, Attorney at Law, For Harper, Rebecca, et al. - (By Email)

Mr. Terence Steed, Assistant Attorney General, For State Board of Elections, et al. - (By Email)

Mr. Amar Majmundar, Senior Deputy Attorney General, For State Board of Elections, et al. - (By Email)

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Mr. Ryan Y. Park, Solicitor General, For Gov. Cooper and AG Stein - (By Email)

Mr. James W. Doggett, Deputy Solicitor General, For Gov. Cooper and AG Stein - (By Email)

Mr. Zachary W. Ezor, Solicitor General Fellow, For Gov. Cooper and AG Stein - (By Email)

Ms. Kellie Z. Myers, Trial Court Administrator - (By Email)
West Publishing - (By Email)
Lexis-Nexis - (By Email)



December 9, 2021

Via hand delivery

The Hon. Tamara Barringer
Associate Justice
Supreme Court of North Carolina
2 E Morgan St
Raleigh, NC 27602

Via hand delivery and email
(alf@sc.nccourts.org)

The Hon. Amy L Funderburk
Clerk
Supreme Court of North Carolina
2 E Morgan St
Raleigh, NC 27602

Re: Records request in re Orders entered 8 December 2021 in Docket No. 413P21, Harper v. Hall; North Carolina League of Conservation Voters v. Hall

Dear Justice Barringer and Ms. Funderburk:

Pursuant to N.C. Gen. Stat. §§ 132-1, 7A-109 and/or the North Carolina Constitution, Art. I, Sec. 18, I demand individually and on behalf of Bishop for Congress, a federal campaign committee, a copy of the record of the court (or if multiple records are responsive, then any one of them) disclosing:

1. The identity of the justice who signed the orders for the court; and
2. The votes of the justices in conference for each of the orders.

Please advise me by email of how I can access the responsive record(s) or transmit it (them) to me by email at the address below. The same exigencies recited by the court in one of the orders necessitates an immediate response to this request.

Very truly yours,

A handwritten signature in blue ink that reads "Dan Bishop".

Rep. Dan Bishop
Cell: (704) 619-7580
Email: dan@votedanbishop.com

cc: Media



From: [Funderburk, Amy L.](#)
To: [Dan Bishop](#)
Cc: [James Hampson](#)
Subject: RE: Record demand SCONC 12-9-2021
Date: Friday, December 10, 2021 3:02:05 PM
Attachments: [order.email.text.416P21413P21.pdf](#)

Representative Bishop,

I am providing the attached as public records responsive to your first request:

1. Orders of the Court, signed by Justice Barringer as junior justice;
2. Email correspondence between myself and a representative of the Carolina Journal, inquiring as to who had signed the order; and
3. A text message between myself and counsel for the legislative defendants, inquiring as to who had signed the order.

My office has no records responsive to your second request.

Thank you,

Amy L. Funderburk
Supreme Court of North Carolina
O 919-831-5700

From: Dan Bishop <dan@votedanbishop.com>
Sent: Thursday, December 9, 2021 5:24 PM
To: Funderburk, Amy L. <alf@sc.nccourts.org>
Cc: James Hampson <james@votedanbishop.com>
Subject: Fwd: Record demand SCONC 12-9-2021

See attached and below. Urgent.

Rep. Dan Bishop
U.S. House of Representatives, NC09
Cell: (704) 619-7580
Email: dan@votedanbishop.com
Web: www.votedanbishop.com

Outreach Coordinator: Caroline Winchester
Cell: (704) 200-5058
Email: caroline@votedanbishop.com

Begin forwarded message:

From: James Hampson <james@votedanbishop.com>
Date: December 9, 2021 at 4:53:26 PM EST
To: brj@sc.nccourts.org
Cc: Dan Bishop <dan@votedanbishop.com>

Subject: Record demand SCONC 12-9-2021

Hello,

Please read attached. This is urgent. Thank you.

Sent from my iPhone

SUPREME COURT OF NORTH CAROLINA

* * * * *

REBECCA HARPER; AMY CLARE)
OSEROFF; DONALD RUMPH; JOHN)
ANTHONY BALLA; RICHARD R. CREWS;)
LILY NICOLE QUICK; GETTYS COHEN,)
JR.; SHAWN RUSH; JACKSON THOMAS)
DUNN, JR.; MARK S. PETERS; KATHLEEN)
BARNES; VIRGINIA WALTERS BRIEN; and)
DAVID DWIGHT BROWN)

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CAROLINA HOUSE OF)
REPRESENTATIVES, TIMOTHY K.)
MOORE; PRESIDENT PRO TEMPORE OF)
THE NORTH CAROLINA SENATE, PHILIP)
E. BERGER; THE NORTH CAROLINA)
STATE BOARD OF ELECTIONS; and)
DAMON CIRCOSTA, in his official capacity)

Defendants.)

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CONSERVATION VOTERS, INC.; HENRY)
M. MICHAUX, JR.; DANDRIELLE LEWIS;)
TIMOTHY CHARTIER; TALIA FERNÓS;)
KATHERINE NEWHALL; R. JASON)
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BRINSON BELL, in her official capacity as)
Executive Director of the North Carolina)
State Board of Elections)

* * * * *

ORDER

Plaintiffs' Petitions for Discretionary Review Prior to Determination by the Court of Appeals, Motion to Suspend Appellate Rules to Expedite a Decision, and Motion to Suspend Appellate Rules and Expedite Schedule, filed in these consolidated cases on 6 December 2021 are allowed as follows:

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3. The trial court is directed to hold proceedings necessary to reach a ruling on the merits of plaintiffs' claims and to provide a written ruling on or before Tuesday, January 11, 2022.

4. Any party wishing to appeal the trial court's ruling must file a Notice of Appeal within two business days of the trial court's ruling, exclusive of weekends and holidays, in the trial court and with this Court, and should expect that an expedited briefing and hearing schedule in this Court will commence immediately thereafter.

The Petition for Writ of Supersedeas and Motion for Temporary Stay are dismissed as moot.

By order of the Court in Conference, this the 8th day of December, 2021.

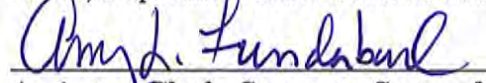


For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 8th day of December, 2021.



AMY L. FUNDERBURK
Clerk, Supreme Court of North Carolina


Assistant Clerk, Supreme Court of
North Carolina

Copy to:

North Carolina Court of Appeals

Mr. Narendra K. Ghosh, Attorney at Law, For Harper, Rebecca, et al. - (By Email)

Mr. Terence Steed, Assistant Attorney General, For State Board of Elections, et al. - (By Email)

Mr. Amar Majmundar, Senior Deputy Attorney General, For State Board of Elections, et al. - (By Email)

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Mr. Stephen D. Feldman, Attorney at Law, For N.C. League of Conservation Voters, Inc., et al. - (By Email)

Mr. Adam K. Doerr, Attorney at Law, For N.C. League of Conservation Voters, Inc., et al. - (By Email)

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Ms. Kellie Z. Myers, Trial Court Administrator - (By Email)
West Publishing - (By Email)
Lexis-Nexis - (By Email)

SUPREME COURT OF NORTH CAROLINA

* * * * *

NORTH CAROLINA STATE)
CONFERENCE OF THE NAACP,)
COMMON CAUSE, MARILYN HARRIS,)
GARY GRANT, JOYAH BULLUCK, and)
THOMASINA WILLIAMS,)

From Wake County

Plaintiffs-petitioners,)

v.)

PHILLIP E.BERGER *in his official capacity*)
as President Pro Tempore of the North)
Carolina Senate; TIMOTHY K. MOORE in)
his official capacity as Speaker of the North)
Carolina House of Representatives; RALPH)
E. HISE, JR., WARREN DANIEL, PAUL)
NEWTON, in their official capacities as Co-)
Chairmen of the Senate Committee on)
Redistricting and Elections; DESTIN HALL,)
in his official capacity as Chairman of the)
House Standing Committee on Redistricting,)
THE STATE OF NORTH CAROLINA; THE)
NORTH CAROLINA STATE BOARD OF)
ELECTIONS; DAMON CIRCOSTA, *in his*)
official capacity as Chair of the State Board)
of Elections; STELLA ANDERSON, in her)
official capacity as Secretary of the State)
Board of Elections; STACY EGGERS IV, in)
his official capacity as Member of the State)
Board of Elections; JEFF CARMON III, in)
his official capacity as Member of the State)
Board of Elections; TOMMY TUCKER, in)
his official capacity as Member of the State)
Board of Elections; KAREN BRINSON)
BELL, in her official capacity as Executive)
Director of the State Board of Elections,)

Defendants-respondents)

ORDER

Plaintiffs-petitioners' Motion to Expedite Consideration of Decision in the Public Interest is allowed. Pursuant to Rule 15 of the North Carolina Rules of Appellate Procedure, the Petition for Discretionary Review is dismissed ex mero motu without prejudice to the plaintiffs-petitioners' right to seek leave from the Superior Court to intervene in the trial court proceedings in the consolidated cases of *Harper v. Hall*, No. 21 CVS 50085 (N.C. Super. Ct., Wake Cnty.) and *North Carolina League of Conservation Voters, Inc. v. Hall*, No. 21 CVS 015426 (N.C. Super. Ct., Wake Cnty.). Plaintiff-petitioners' motions for temporary stay, to disqualify Justice Berger, Jr. and for the pro hac vice admission of J. Tom Boer and Olivia T. Molodanof of the law firm Hogan Lovells US LLP are dismissed as moot.

By order of the Court in Conference, this the 8th day of December, 2021.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 8th day of December, 2021.



AMY L. FUNDERBURK
Clerk of the Supreme Court



Assistant Clerk

Copy to:
Ms. Hilary H. Klein, Attorney at Law, For North Carolina State Conference of the NAACP, et al. -
(By Email)

Mr. Thomas A. Farr, Attorney at law, For Berger, Philip E., et al. - (By Email)
Ms. Alyssa Riggins, Attorney at Law, For Berger, Philip E., et al. - (By Email)
Ms. Allison J. Riggs, Attorney at Law, For North Carolina State Conference of the NAACP, et al. - (By Email)
Mr. Mitchell Brown, Attorney at Law, For North Carolina State Conference of the NAACP, et al. - (By Email)
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Ms. Kellie Z. Myers, Trial Court Administrator - (By Email)
West Publishing - (By Email)
Lexis-Nexis - (By Email)

Funderburk, Amy L.

From: Donna King <dking@carolinajournal.com>
Sent: Wednesday, December 8, 2021 5:51 PM
To: Funderburk, Amy L.
Subject: Signature line on order

Hi Amy – which justice signed this evenings order on primaries? I cant read the signature

Thanks!

Funderburk, Amy L.

From: Funderburk, Amy L.
Sent: Wednesday, December 8, 2021 6:54 PM
To: Donna King
Subject: Re: Signature line on order

Justice Barringer

Amy Funderburk
Clerk of Court
Supreme Court of North Carolina

From: Donna King <dking@carolinajournal.com>
Sent: Wednesday, December 8, 2021, 5:50 PM
To: Funderburk, Amy L.
Subject: Signature line on order

Hi Amy – which justice signed this evenings order on primaries? I cant read the signature

Thanks!

12/8/21 text message from Martin Warf, counsel for Legislative Defendants, with response from Clerk.

M

Because I'll get asked. Are you authorized to say who's signature that is for the court?

4:54 PM

I am, barringer.



December 22, 2021

Via email only

Supreme Court of North Carolina

North Carolina Court of Appeals

The Hon. Paul Newby,
Chief Justice of North Carolina

The Hon. Donna Stroud,
Chief Judge

The Hon. Amy L. Funderburk,
Clerk

The Hon. Eugene H. Soar,
Clerk

Re: **Demand for judges' votes on:**

Supreme Court orders entered 8 December 2021 in Docket No. 413P21,
Harper v. Hall; North Carolina League of Conservation Voters, Inc. v.
Hall

Court of Appeals orders entered 6 December 2021 in Docket No. P21-
525, bearing the same caption in part

Dear Honorable Ladies and Gentlemen:

This letter reiterates and expands my December 9 demand to Ms. Funderburk and Justice Barringer (as junior associate justice), to which I have had no sufficient response. Based on the First Amendment to the U.S. Constitution, the Open Courts provision of the North Carolina Constitution, Art. I, Sec. 18, and N.C. Gen. Stat. §§ 132-1 and 7A-109, I demand a copy of the record of your respective courts (or if multiple records are responsive, then any one of them) disclosing the votes of the justices and judges on the orders referenced above.

Please note that absent your furnishing such access by 2:00 p.m. today, I intend to file the within complaint in the United States District Court to enforce this constitutional entitlement.

Very truly yours,

A handwritten signature in blue ink that reads "Dan Bishop".

Dan Bishop

Cell: (704) 619-7580

Email: dan@votedanbishop.com

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2021 DEC -3 PM 3:35
FILE NO. 21 CVS 015426

NORTH CAROLINA LEAGUE, OF
CONSERVATION VOTERS, INC.;
HENRY M. MICHAUX, JR.;
DANDRIELLE LEWIS; TIMOTHY
CHARTER; TALIA FERNOS;
KATHERINE NEWHALL; R. JASON
PARSLEY; EDNA SCOTT; ROBERTA
SCOTT; YVETTE ROBERTS;
JEREANN KING JOHNSON;
REVEREND REGINALD WELLS;
YARBROUGH WILLIAMS, JR.;
REVEREND DELORIS L. JERMAN;
VIOLA RYALS FIGUEROA; and
COSMOS GEORGE,

WAKE CO., C.S.C.

BY

Plaintiffs,

v.

ORDER ON PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the
House Standing Committee on
Redistricting; SENATOR WARREN
DANIEL, in his official capacity as Co-
Chair of the Senate Standing
Committee on Redistricting and
Elections; SENATOR RALPH E. HISE,
JR., 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; REPRESENTATIVE
TIMOTHY K. MOORE, in his official
capacity as Speaker of the North
Carolina House of Representatives;
SENATOR PHILIP E. BERGER, in his
official capacity as President
Pro Tempore of the North Carolina
Senate; THE STATE

OF NORTH CAROLINA; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as Chairman of the North Carolina State Board of Elections; STELLA ANDERSON, in her official capacity as Secretary of the North Carolina State Board of Elections; JEFF CARMON III, in his official capacity as Member of the North Carolina State Board of Elections; STACY EGGERS IV, in his official capacity as Member of the North Carolina State Board of Elections; TOMMY TUCKER, in his official capacity as Member of the North Carolina State Board of Elections; and KAREN BRINSON BELL, in her official capacity as Executive Director of the North Carolina State Board of Elections,

Defendants

STATE OF NORTH CAROLINA
COUNTY OF WAKE

REBECCA HARPER; AMY CLARE OSEROFF; DONALD RUMPH; JOHN ANTHONY BALLA; RICHARD R. CREWS; LILY NICOLE QUICK; GETTYS COHEN JR.; SHAWN RUSH; JACKSON THOMAS DUNN, JR.; MARK S. PETERS; KATHLEEN BARNES; VIRGINIA WALTERS BRIEN; DAVID DWIGHT BROWN,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL,
IN HIS OFFICIAL CAPACITY AS

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

ORDER ON PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION

CHAIR OF THE HOUSE STANDING COMMITTEE ON REDISTRICTING; SENATOR WARREN DANIEL, IN HIS OFFICIAL CAPACITY AS CO-CHAIR OF THE SENATE STANDING COMMITTEE ON REDISTRICTING AND ELECTIONS; SENATOR RALPH HISE, 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; PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE PHILIP E. BERGER; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; STELLA ANDERSON, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; JEFF CARMON III, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; STACY EGGERS IV, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; TOMMY TUCKER, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH

CAROLINA STATE BOARD OF
ELECTIONS,

Defendants

THESE MATTERS came on to be heard before the undersigned three-judge panel on December 3, 2021. Upon considering the pleadings, parties' briefs and submitted materials, arguments, pertinent case law, and the record established thus far, the Court finds and concludes, for the purposes of this Order, as follows:

As an initial matter, in order to promote judicial efficiency and expediency, this court has exercised its discretion, pursuant to Rule 42 of the North Carolina Rule of Civil Procedure, to consolidate these two cases for purposes of consideration of the arguments and entry of this Order, due to this court's conclusion that the two cases involve common questions of fact and issues of law. Because the claims do not completely overlap, the various claims of the parties will be addressed separately within this order.

In this litigation, the North Carolina League of Conservation Voters, Inc. and individual Plaintiffs in Civil Action 21 CVS 015426 (hereinafter "NCLCV Plaintiffs") have asserted the following causes of action against Defendants:

1. That Defendants' enacted redistricting maps for state legislative and congressional districts (hereinafter referred to as "Enacted Plans") constitute extreme partisan gerrymanders in violation of the Free Elections Clause under Article I, Section 10 of the North Carolina Constitution; the Equal Protection

Clause under Article I, Section 19 of the North Carolina Constitution; the Free Speech and Free Assembly Clauses under Article I, Sections 12 and 14 of the North Carolina Constitution; and

2. That the Enacted Plans cause unlawful racial vote dilution in violation of the Free Elections Clause under Article I, Section 10 of the North Carolina Constitution and the Equal Protection Clause under Article I, Section 19 of the North Carolina Constitution; and
3. That the Enacted Plans were drawn in violation of the Whole County Provisions of Article II, Sections 3(3) and 5(3) of the North Carolina Constitution, and *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*.

NCLCV Plaintiffs have moved for a preliminary injunction solely on their partisan gerrymandering-based claims.

NCLCV Plaintiffs seek to enjoin Defendants, their agents, officers, and employees from preparing for, administering, or conducting the March 8, 2022 primary elections and any subsequent elections for Congress, the North Carolina Senate, or the North Carolina House of Representatives using the Enacted Plans. Plaintiffs further request that to the extent the General Assembly fails to adopt redistricting plans—within two weeks from the date of this Court’s entry of a preliminary injunction—that adequately remedy the Enacted Plans, then the 2022 primary elections and 2022 general elections for Congress, North Carolina Senate, and the North Carolina House of Representatives shall be conducted under Plaintiffs’ Optimized Maps, as outlined in their Verified Complaint.

The individual Plaintiffs in Civil Action 21 CVS 500085 (hereinafter “Harper Plaintiffs”) have asserted the following causes of action against Defendants, claiming that the Enacted Plans for congressional districts are unlawful partisan gerrymanders in violation of: the Free Elections Clause of Article I, Section 10 of the North Carolina

Constitution; the Equal Protection Clause of Article I, Section 19 of the North Carolina Constitution; and the Freedom of Speech and Freedom of Assembly Clauses of Article I, Sections 12 and 14 of the North Carolina Constitution.

Harper Plaintiffs seek to enjoin Defendants, their agents, officers, and employees from preparing for, administering, or conducting the March 8, 2022, primary elections and any subsequent elections for the United State House of Representatives using the Enacted Plans. Harper Plaintiffs further prays this Court set forth a remedial process to create a new plan that complies with the North Carolina Constitution, to include a court-ordered remedial plan if the General Assembly fails to timely enact an adequate remedial plan.

Legislative Defendants (the Speaker of the North Carolina House of Representatives, the President Pro Tempore of the Senate, and the redistricting committees of each respective chamber) have responded to plaintiffs' motions by asserting that Plaintiffs' lack standing, present a political question, and that the Free Elections, Equal Protection, Freedom of Speech and Freedom of Assembly claims have been misapprehended by Plaintiffs.

State Defendants (the State of North Carolina, State Board of Elections, members of the State Board of Elections in their official capacity, and the Director of the State Board of Elections) have taken no position on the merits of Plaintiffs' motions for preliminary injunction but have provided information as to election administration concerns and deadlines.

PROCEDURAL HISTORY

On August 12, 2021, the United States Census Bureau released new census data. North Carolina gained a congressional seat due to population growth pursuant to Article I,

Section 2, Clause 3 of the United States Constitution, and Title 13 of the United States Code. On November 4, 2021, the General Assembly enacted S.L. 2021-173 (North Carolina Senate districts); S.L. 2021-174 (United States House of Representatives districts); S.L. 2021-175 (North Carolina House of Representatives districts). NCLCV Plaintiffs filed their Complaint in this matter on November 16, 2021, contemporaneously with the present Motion for Preliminary Injunction. Harper Plaintiffs filed their Complaint in this matter on November 18, 2021, and the present Motion for Preliminary Injunction on November 30, 2021. The undersigned three-judge panel was assigned to preside over the NCLCV and Harper matters pursuant to N.C.G.S. § 1-267.1 on November 19, 2021, and November 22, 2021, respectively.

POLITICAL QUESTION DOCTRINE

Plaintiffs' claims are not likely to succeed because they are not justiciable. North Carolina courts lack jurisdiction over political questions. *See, e.g., Bacon v. Lee*, 353 N.C. 696, 716, 549 S.E.2d 840, 854 (2001). The State Constitution delegates to the General Assembly the power to create congressional districts. Because a constitution cannot be in violation of itself, a delegation of a political task to a political branch of government implies a delegation of political discretion. Because Plaintiffs' claims are not justiciable, they have not shown a likelihood of success on the merits.

STANDING OF PLAINTIFFS

Plaintiffs are unlikely to establish standing. It is clear that a voter is only directly injured by specific concerns with that voter's districts. *Gill v. Whitford*, 138 S. Ct. 1916,

1932 (2018). A plaintiff has standing to challenge the district in which that plaintiff lives, but cannot raise generalized grievances about redistricting plans. Additionally, a “hope of achieving a Democratic [or Republican] majority in the legislature” is not a particularized harm. *Id.* Additionally, a district’s partisan composition is not a cognizable injury is a similar composition would result “under any plausible circumstance.” *Id.* at 1824, 1932.

None of the Harper Plaintiffs reside in six of the challenged congressional districts (CD2, CD3, CD5, CD8, CD12, and CD13). Additionally, though the Harper Plaintiffs claim that Democratic voters are “packed” in CD9 and CD6, they admit that these districts would be “packed” with Democratic voters in any event. This is also true for the “cracking” claimed in CD1, CD7, and CD10. For the remaining districts (CD4 and CD14), the Harper Plaintiffs are presumed to be represented by their designated representatives and it is therefore not self-evident that these individual plaintiffs are harmed.

The NCLCV Plaintiffs reside in only 6 of the congressional districts, 8 of the Senate districts, and 9 of the House districts. The individual plaintiffs do not establish that their own districts would shift from Republican-leaning to Democratic-leaning under a different configuration or that they are prevented from electing their candidates of choice. The organizational plaintiffs have not shown how the redistricting legislation has negatively impacted their ability to complete their organizational mission.

The Plaintiffs are unlikely to prove standing and therefore have not shown a likelihood of success on the merits.

INJUNCTIVE RELIEF

“It is well settled in this State that the courts have the power, and it is their duty in proper cases, to declare an act of the General Assembly unconstitutional—but it must be

plainly and clearly the case. If there is any reasonable doubt, it will be resolved in favor of the lawful exercise of their powers by the representatives of the people.” *City of Asheville v. State*, 369 N.C. 80, 87-88, 794 S.E.2d 759, 766 (2016) (quoting *Glenn v. Bd. of Educ.*, 210 N.C. 525, 529-30, 187 S.E. 781, 784 (1936)); *State ex rel. Martin v. Preston*, 325 N.C. 438, 449, 385 S.E.2d 473, 478 (1989). “An act of the General Assembly will be declared unconstitutional only when ‘it [is] plainly and clearly the case,’ . . . and its unconstitutionality must be demonstrated beyond a reasonable doubt.” *Town of Boone v. State*, 369 N.C. 126, 130, 794 S.E.2d 710, 714 (2016).

Plaintiffs have moved for a preliminary injunction pending a resolution of this action on the merits. “The purpose of a preliminary injunction is ordinarily to preserve the *status quo* pending trial on the merits. Its issuance is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities.” *State ex rel. Edmisten v. Fayetteville Street Christian School*, 299 N.C. 351, 357, 261 S.E.2d 908, 913 (1980). A preliminary injunction is an “extraordinary remedy” and will issue “only (1) if a plaintiff is able to show *likelihood* of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff’s rights during the course of litigation.” *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759-60 (1983) (emphasis in original); *see also* N.C.G.S. § 1A-1, Rule 65(b). When assessing the preliminary injunction factors, the trial judge “should engage in a balancing process, weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted. In effect, the harm alleged by the plaintiff must satisfy a standard of relative substantiality as well as irreparability.” *Williams v. Greene*, 36 N.C. App. 80, 86, 243 S.E.2d 156, 160 (1978).

Injunctive relief “may be classified as ‘prohibitory’ and ‘mandatory.’ The former are preventive in character, and forbid the continuance of a wrongful act or the doing of some threatened or anticipated injury; the latter are affirmative in character, and require positive action involving a change of existing conditions—the doing or undoing of an act.” *Roberts v. Madison Cty. Realtors Ass’n*, 344 N.C. 394, 399-400, 474 S.E.2d 783, 787 (1996) (citations and quotation omitted).

Status Quo

Plaintiffs have asked that this Court enjoin the 2021 congressional and state legislative district legislation and to move the March 2022 primary schedule. However, this requested relief alters the status quo. Plaintiffs are not asking this Court to restore what has been unlawfully changed, but to create a new condition that has not existed to this point. *See Seaboard Air Line R. Co. v. A. Coast Line R. Co.*, 287 N.C. 88, 96, 74 S.E.2d 430, 436 (1953). Plaintiffs here have never voted under a redistricting plan like the one they request and so are asserting rights that have never existed. *Id.*

Likelihood of Success on the Merits

Plaintiffs burden on a motion for preliminary injunction is to show a likelihood of success in proving beyond a reasonable doubt that the enacted congressional and state legislative districts are unconstitutional. This Court finds on these facts that Plaintiffs have failed to carry this burden.

The Supreme Court of North Carolina has ruled that “[t]he General Assembly may consider partisan advantage and incumbency protection in the application of its discretionary redistricting decisions.” *Stephenson v. Bartlett*, 355 N.C. 534, 371, 562 S.E.2d 377, 390 (2002). The North Carolina Constitution “clearly contemplates districting by

political entities” and redistricting is “root-and-branch a matter of politics.” *Vieth v. Jubelirer*, 541 U.S. 267, 285 (2004) (plurality op.).

Plaintiff have not shown a likelihood of success on their Free Elections Clause claims. The decision in *Common Cause v. Lewis*, No. 18-CVS-014001, 2019 WL 4569584 relied heavily on the evidence of intentionally partisan gerrymandering, stating that they were “designed specifically to ensure that Democrats would not win a majority.”

While the decision in *Common Cause v. Lewis* is not binding on this Court, it seems clear that some evidence of intent is required to prove of claim of extreme partisan gerrymandering. Plaintiffs have not claimed intent. In fact, the evidence presented shows that the General Assembly did not use any partisan data in the creation of these congressional and state legislative districts, suggesting a lack of intent.

Plaintiffs have also not shown a likelihood of success on the merits on their Equal Protection Clause claims. Membership in a political party is not a suspect classification. *See Libertarian Party of N. Carolina v. State*, 365 N.C. 41, 51-53, 707 S.E.2d 199, 206 (2011). Additionally, political considerations in redistricting do not impinge on the fundamental right to vote. These considerations do not deny the opportunity to vote nor do they result in the unequal weighing of votes.

Plaintiffs likewise have not shown a likelihood of success on the merits of their Freedom of Speech and Assembly claims. Political considerations in redistricting do not place any restraints on speech and do not discourage those who wish to speak. Additionally, associational rights do not guarantee a favorable outcome, only the ability to participate in the political process. These rights are not infringed by political considerations in redistricting.

Additionally, Plaintiffs assert claims regarding the congressional district legislation only under the North Carolina Constitution. However, it is the federal Constitution which

provides the North Carolina General Assembly with the power to establish such districts. In order to address these claims, this Court must derive authority from the federal Constitution. Since claims under the federal Constitution have not been alleged, Plaintiffs have not shown a likelihood of success on the merits.

Irreparable Harm

As discussed above, Plaintiffs have challenged districts in which they do not live, districts that would not likely be meaningfully different under any reasonable maps, and have asserted only abstract harms. They have not alleged that they are unable to obtain representation in Congress or the General Assembly by whomever is ultimately elected. As such, they have not shown that they will suffer irreparable harm should their request be denied.

Weighing of the Equities

Though Plaintiffs have not shown that they will suffer harm should their request be denied, the State and the public will suffer irreparable harm should the request be granted. It is obvious that any time a statute is enjoined, the State suffers irreparable harm. *See Maryland v. King*, 567 U.S. 1301, 133 (2012). This is particularly true in the area of elections due to the State's indisputably compelling interest in preserving the integrity of the election process. *See Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989). Additionally, an injunction will cause significant disruption, confusion, and uncertainty in the election process. As such, the equities weigh in favor of denial.

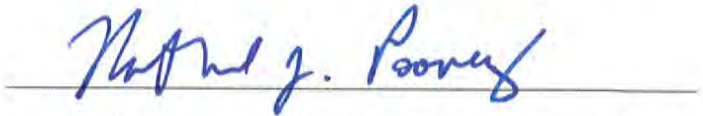
CONCLUSION

Under these circumstances, the Court, in its discretion and after a careful balancing of the equities, concludes that the requested injunctive relief shall not issue in regard to the 2021 Enacted Plans. To the extent necessary, this Court determines that there is no just reason for delay and certifies this order for immediate appeal pursuant to Rule 54 of the North Carolina Rules of Civil Procedure.

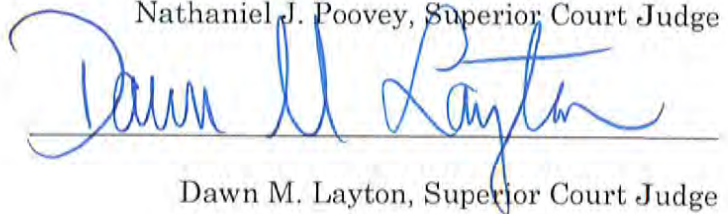
This the 3 day of December, 2021.

A handwritten signature in blue ink, appearing to read "A. Shirley", written over a horizontal line.

A. Graham Shirley, Superior Court Judge

A handwritten signature in blue ink, appearing to read "Nathaniel J. Poovey", written over a horizontal line.

Nathaniel J. Poovey, Superior Court Judge

A handwritten signature in blue ink, appearing to read "Dawn M. Layton", written over a horizontal line.

Dawn M. Layton, Superior Court Judge

Supreme Court of North Carolina



COMMON CAUSE; NORTH CAROLINA DEMOCRATIC PARTY; PAULA ANN CHAPMAN; HOWARD DU BOSE JR.; GEORGE DAVID GAUCK; JAMES MACKIN NESBIT; DWIGHT JORDAN; JOSEPH THOMAS GATES; MARK S. PETERS; PAMELA MORTON; VIRGINIA WALTERS BRIEN; JOHN MARK TURNER; LEON CHARLES SCHALLER; REBECCA HARPER; LESLEY BROOK WISCHMANN; DAVID DWIGHT BROWN; AMY CLARE OSEROFF; KRISTIN PARKER JACKSON; JOHN BALLA; REBECCA JOHNSON; AARON WOLFF; KAREN SUE HOLBROOK; KATHLEEN BARNES; ANN MCCrackEN; JACKSON THOMAS DUNN, JR.; ALYCE MACHAK; WILLIAM SERVICE; DONALD RUMPH; STEPHEN DOUGLAS MCGRIGOR; NANCY BRADLEY; VINOD THOMAS; DERRICK MILLER; ELECTA E. PERSON; DEBORAH ANDERSON SMITH; ROSALYN SLOAN; JULIE ANN FREY; LILY NICOLE QUICK; JOSHUA BROWN; CARLTON E. CAMPBELL SR.

v

DAVID LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON REDISTRICTING; RALPH HISE, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE SENATE STANDING COMMITTEE ON REDISTRICTING; SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES TIMOTHY K. MOORE; PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE PHILIP E. BERGER; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; STELLA ANDERSON, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; KENNETH RAYMOND, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; JEFF CARMON, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAVID C. BLACK, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS

From Wake
(18CVS014001)

ORDER

Upon consideration of the petition filed by Plaintiffs on the 1st of November 2019 in this matter for discretionary review under G.S. 7A-31 prior to a determination by the North Carolina Court of Appeals, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 15th of November 2019."

s/ Hudson, J.
For the Court

The following order has been entered on the motion filed on the 1st of November 2019 by Plaintiffs to Suspend Appellate Rules:

"Motion Dismissed as moot by order of the Court in conference, this the 15th of November 2019."

s/ Hudson, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 15th day of November 2019.



Amy L. Funderburk
Clerk, Supreme Court of North Carolina

M. C. Hackney
M. C. Hackney
Assistant Clerk, Supreme Court Of North Carolina

Copy to:

Mr. Edwin Speas, Attorney at Law, For Common Cause, et al. - (By Email)
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Ms. Stephanie A. Brennan, Special Deputy Attorney General, For State Board of Elections, et al. - (By Email)
Mr. Paul Mason Cox, Special Deputy Attorney General, For State Board of Elections, et al. - (By Email)
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Mr. Andrew Brown, Attorney at Law, For Reid, Reginald, et al. - (By Email)
Mr. Phillip J. Strach, Attorney at Law, For Lewis, David (as Senior Chairman of House Select Committee on Redistricting), et al. - (By Email)
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