

SUPREME COURT OF NORTH CAROLINA

NORTH CAROLINA LEAGUE OF)
 CONSERVATION VOTERS, INC., et al.,)
 Plaintiffs-Appellants,)
)
 REBECCA HARPER, et al.,)
 Plaintiffs-Appellants, and)
)
 COMMON CAUSE,)
 Plaintiff-Intervenor-Appellant,)
)
 v.)
)
 REPRESENTATIVE DESTIN HALL, in his)
 official capacity as Chair of the House)
 Standing Committee on Redistricting, et al.,)
)
 Defendants-)
 Appellees.)

From Wake County
 21 CVS 015426
 21 CVS 500085

LEGISLATIVE DEFENDANTS' MOTION TO DISMISS APPEAL

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

NOW COMES President *Pro Tempore* Philip E. Berger, Senator Warren Daniel, Senator Ralph Hise, Senator Paul Newton, Representative Destin Hall, and Speaker Timothy K. Moore in their official capacities (collectively, “Legislative Defendants”) through counsel, pursuant to N.C. R. App. P. 37(e) and hereby respectfully move to dismiss their appeal of the trial court’s rulings on the remedial Congressional Plan and Legislative Defendants’ Motion to Disqualify. In support of this motion, Legislative Defendants show the Court as follows:

1. On 23 February 2022 all Plaintiffs and Legislative Defendants filed notices of appeal from the trial court’s 23 February 2022 order. Plaintiffs appealed from the trial court’s order upholding one or both of the remedial House and Senate Redistricting Plans. Legislative Defendants filed a notice of appeal from two trial court orders: (1) striking down the remedial Congressional Redistricting Plan and replacing it with a plan drawn by an Assistant to the Special Masters; and (2) denying Legislative Defendants’ Motion to Disqualify Special Master Assistants Wang and Jarvis.

2. On 26 May 2022, the Parties filed their joint record on appeal.

3. Since filing the record on appeal the Plaintiffs have engaged in additional motions practice. First, Plaintiff Intervenor, Common Cause, sought to suspend the Appellate Rules and expedite briefing and oral arguments in this case. Secondly, Plaintiffs and State Defendants have provided their position on what effect

the grant of certiorari by the Supreme Court of the United States in *Moore v. Harper* (21-1871) has on the posture of this matter.

4. Based on the filings to date in this Court, it is clear that all parties agree that nothing in the outcome of this appeal will disturb the maps currently in place for the 2022 election cycle. That is because the remedial Congressional Map ordered by the trial court is only applicable to the 2022 election, and that map will apply to the 2022 election regardless of the outcome of the appeal in this Court. Accordingly, in several portions of these filings, parties point out that the Congressional Maps ordered by the trial court are only valid for the 2022 election. See 8 July 2022 Filing of State Board, p. 2-3; 8 July 2022 Joint Filing of NCLCV and Harper Plaintiffs, p 5; 8 July 2022 Filing of Plaintiff Intervenor Common Cause p 2.

5. Because the remedial Congressional Map ordered by the trial court will apply in 2022, and because 2022 is the only election to which the remedial Congressional Map will apply, in an effort to avoid further cost and confusion to the taxpayers and voters of North Carolina, Legislative Defendants' seek to dismiss the entirety of their portion of this cross-appeal.¹

6. Legislative Defendants have consulted with the other Parties in this matter pursuant to Rule 37(e). As part of the consultation, Legislative Defendants offered to pay the taxable appellate costs related to the Congressional appeal, not

¹ As indicated in the notice of appeal Legislative Defendants appealed from the trial court's 23 February 2022 orders rejecting the General Assembly's Remedial Congressional Plan and adopting a plan drawn by Special Masters and the order denying Legislative Defendants' motion to disqualify Special Master Assistants Wang and Jarvis. (R pp 5143-44).

already paid by Legislative Defendants. Counsel for the State Board of Elections take no position on this motion. Counsel for *Harper*, *Common Cause*, and *NCLCV* indicated that they would file a response after seeing this motion.

WHEREFORE, Legislative Defendants request that the entirety of their portion of the cross appeal in the instant matter be dismissed, with appellate costs related to the Congressional appeal incurred thus far to be taxed to Legislative Defendants.

Respectfully submitted, this the 13th day of July, 2022.

**NELSON MULLINS RILEY &
SCARBOROUGH LLP**

Electronically Submitted

Phillip J. Strach
NC Bar No. 29456
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 329-3800
Facsimile: (919) 329-3799
phillip.strach@nelsonmullins.com

N.C. R. App. P. 33(b) Certification:
I certify that all of the attorneys listed below
have authorized me to list their names on
this document as if they had personally
signed it.

Thomas A. Farr (NC Bar No. 10871)
tom.farr@nelsonmullins.com
Alyssa M. Riggins (NC Bar No. 52366)
Alyssa.riggins@nelsonmullins.com
4140 Parklane Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 329-3800

BAKER & HOSTETLER LLP

Katherine L. McKnight (VA Bar. No. 81482)*
kmcknight@bakerlaw.com
E. Mark Braden (DC Bar No. 419915)*
mbraden@bakerlaw.com
Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5403
Telephone: 202.861.1500

Counsel for Legislative Defendants

**Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

It is hereby certified that on this the 13th day of July, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com
Counsel for Plaintiffs North Carolina League of Conservation Voters, et al.

Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
Counsel for the North Carolina State Board of Elections; Damon Circosta, Stella Anderson, Jeff Carmon III, Stacy Eggers IV, and Tommy Tucker, in their official capacities with the State Board of Elections

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
Counsel for Plaintiffs North Carolina League of Conservation Voters, et al.

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

*Counsel for Plaintiffs North Carolina League
of Conservation Voters, et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
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

J. Tom Boer
Olivia T. Molodanof
Hogan Lovells US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com
Counsel for Intervenor Common Cause

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

**NELSON MULLINS RILEY &
SCARBOROUGH LLP**

/s/ electronically submitted
Phillip J. Strach, NCSB #29456