

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

REBECCA HARPER, et al.,

Plaintiffs,

vs.

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

Defendants.

Consolidated with
21 CVS 500085

**LEGISLATIVE DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR
CLARIFICATION**

The *Harper* Plaintiffs' motion for clarification should be denied to the extent it seeks a ruling dispensing with the rules governing hearsay as to affidavit evidence yet to be disclosed. Any clarification on the scope of admissibility of such evidence should be deferred until after December 23 and after the parties have had the opportunity to meet and confer about the evidence in question.

It is unreasonable for the *Harper* Plaintiffs to request that the rules of hearsay be dispensed with before it is known what body of evidence they intend to submit. The Court set this case for a trial to be governed by the rules of evidence, and the hearsay rules are a critical bulwark to ensure the factual veracity of assertions made in court. Legislative Defendants have been more than accommodating to Plaintiffs' expediency concerns by agreeing to permit Plaintiffs to present hearsay affidavit evidence going to their burden to establish standing—which was not a concession Legislative Defendants were compelled by any rule to make. The *Harper* Plaintiffs, however, ask

for too much in demanding the right to present hearsay affidavits addressing such matters as “the map drawing process” and “the substance of the claims at issue.” Mot. 2 (citation omitted). There is no cabining principle to this request. Any number of persons might have a desire to provide commentary or purport to make assertions regarding the map-drawing process. Dismissing hearsay doctrine from this case wholesale before even ascertaining the nature of the proffered testimony risks turning this Court’s docket into a platform for conspiracy theory.

The *Harper* Plaintiffs provide no adequate justification for this exceptional request. Their complaint about “a collective 9 hours to present testimony” merely describes the state of affairs they invited by demanding exceptional relief on an exceptional timetable. It was their choice to make these demands, and the courts of this State have been as accommodating as possible given that Congress set the time of the general election next year and established federal rules governing overseas ballots that no instrumentality of North Carolina is authorized to disregard. *See Foster v. Love*, 522 U.S. 67 (1997). Plaintiffs should not benefit from their exceptional request through relaxed standards of admissibility. Disregarding basic evidentiary principles would not be consistent with the State Supreme Court’s order to bring this case to a “final judgment” by January 11: a final judgment necessarily implies an orderly ruling accompanied by all the indicia of reliability that judgments are meant to provide. In a case of exceptional importance, that assurance of reliability is all the more important.

The *Harper* Plaintiffs’ request is also incompatible with this Court’s reasonable and correct choice to adjudicate their claims at a live trial. The *Harper* Plaintiffs requested that this Court dispense with a trial altogether and resolve their claims in a “paper trial.” Their request to submit an untold amount of hearsay evidence on the papers would effectively revert this case to the paper trial process the *Harper* Plaintiffs failed to persuade this Court is appropriate. Besides, the severe

restrictions applicable to the *Harper* Plaintiffs also apply to Legislative Defendants. The parties are all equally situated in being required to make choices about how to spend their limited trial time. That is no basis to disregard entire bodies of evidentiary doctrine.

Finally, the *Harper* Plaintiffs' request is in all events premature. The Court should not dispense with critical evidentiary rules *before* the parties proffer the evidence in question. As noted, the request could in principle open this Court's docket to large quantities of speculative and baseless assertions about the legislative process and other case issues by any number of persons lacking firsthand knowledge of the topics on which they wish to provide attestations. On the other hand, it is possible that the evidence may be far less objectionable than that and that Legislative Defendants will ultimately consent to admission of some or all of the material. Without knowing *what* evidence is being proffered, the Court is in no position to decide in advance to dispense with an entire body of evidentiary doctrine designed to ensure the validity and professionalism of this proceeding. Therefore, even if the Court is open to considering providing clarification on this topic, it should wait until the parties serve fact witness affidavits and make good-faith efforts to agree on admission of unobjectionable attestations. The Court then will be positioned to address specific and discrete items of evidence as to which disagreement between or among the parties persists.

In sum, to the extent the *Harper* Plaintiffs ask this Court to dispense with the rules of hearsay at this time, their motion should be denied. Any further clarification should be deferred until after December 23.

Respectfully submitted this the 21st day of December, 2021.

/s/ Phillip J. Strach

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