IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SHAUNA WILLIAMS; *et al.*,

Plaintiffs,

v.

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

Defendants.

Civil Action No. 23-CV-1057

NORTH CAROLINA STATE CONFERENCE OF THE NAACP; *et al.*,

Plaintiffs,

v.

PHILIP BERGER, in his official capacity as the President Pro Tempore of the North Carolina Senate; *et al.*,

Defendants.

Civil Action No. 23-CV-1104

LEGISLATIVE DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

The Court should enter partial summary judgment to narrow the questions for trial. There is no triable question on most districts Plaintiffs have challenged and no evidence to justify a trial on the NAACP Plaintiffs' malapportionment claim.

ARGUMENT

I. Plaintiffs Lack Standing For Most of the Relief They Request

Legislative Defendants demonstrated (Legislative Defs.' Memorandum ("Mem.") at 4-11) standing deficiencies that limit the claims Plaintiffs may assert. Plaintiffs' opposition papers reveal additional deficiencies.

A. Plaintiffs Lack Standing to Challenge Districts Where No Plaintiff Resides

Legislative Defendants identified (Mem. 7-8) 143 districts where no Plaintiff or disclosed member is even alleged to reside. Neither set of Plaintiffs disputes Legislative Defendants' factual assertion on this point. *See* NAACP Opp. 8; Williams Opp. 3-4. The Court can make quick work of all such districts.

The NAACP Plaintiffs argue that a voter may challenge the "area where vote dilution has occurred," NAACP Opp. 8, not just the voter's district. This is incorrect. "To the extent that the plaintiffs' alleged harm is the dilution of their votes, that injury is district specific." *Gill v. Whitford*, 585 U.S. 48, 66 (2018); *see also Anne Harding v. Cnty. of Dallas*, 948 F.3d 302, 307 & n.11 (5th Cir. 2020) (applying the standard of *Gill* to Voting Rights Act claims). "An individual voter in [North Carolina] is placed in a single district. He votes for a single representative. The boundaries of the district, and the composition of its voters, determine whether and to what extent a particular voter is packed or cracked."

Gill, 585 U.S. at 66. Accordingly, a plaintiff may challenge and obtain relief against only the district where that voter resides. *Id.* at 66-68; *see also id.* at 66 ("a plaintiff who alleges that he is the object of a racial gerrymander … has standing to assert only that his own district has been so gerrymandered"); *id.* at 67 (explaining that "malapportionment cases" are district-specific). The NAACP Plaintiffs' contrary position rests on cases addressing the *merits* of claims they assert. *See* NAACP Opp. 8-9. But "the standing to assert a claim is distinct from the merits of that claim." *Maryland Shall Issue, Inc. v. Hogan*, 971 F.3d 199, 214 n.5 (4th Cir. 2020), *as amended* (Aug. 31, 2020).

For their part, the Williams Plaintiffs appear to acknowledge basic standing doctrine and characterize their challenges as district-specific. *See* Williams Opp. 6-7. They accuse Legislative Defendants of misapprehending their claims. *See, e.g.*, *id.* at 7-8. But in discovery, the Williams Plaintiffs clearly stated that they "challenge[] the entire 2023 Congressional Plan." Ex. 1, Excerpts from Shauna Williams Disc. Resp. at 3. The Williams Plaintiffs apparently now abandon their statewide claim, *see, e.g.*, Williams Opp. 7, which is meritless in any event, *Gill*, 585 U.S. at 66. The Court should enter summary judgment against any claim in their case except against districts where the Williams Plaintiffs reside.

Like the NAACP Plaintiffs, however, the Williams Plaintiffs muddy the waters by contending they may seek a "remedy" against districts other than those they have standing to challenge. Williams Opp. 10. This ignores that "the remedy that is proper *and sufficient*" in a redistricting case "lies in the revision of the boundaries of the individual's own district." *Gill*, 585 U.S. at 66 (emphasis added). While revising the individual's own district during a remedial phase may require incidental changes to adjacent districts, that does not

entitle a plaintiff to challenge those adjacent districts in their own right. *See id.* at 67 (criticizing a similar "failure to distinguish injury from remedy"); *Agee v. Benson*, 2024 WL 1298018, at *4 (W.D. Mich. Mar. 27, 2024) (three-judge court) (overruling as beyond court's jurisdiction objection that districts where no plaintiff resided should have been altered at remedial phase).

Finally, the Williams Plaintiffs themselves "seem to have conflated" Legislative Defendants' motion by treating it as addressing "the permissible evidence that may be brought." Williams Opp. 10. Legislative Defendants moved for summary judgment, not to exclude evidence. The proper scope of evidence should be addressed at the appropriate juncture.

B. NAACP Plaintiffs' Claims Should Be Dismissed as to Districts Where No Plaintiff Resides, and They Are Not Entitled to Summary Judgment

The NAACP Plaintiffs contend that Legislative Defendants admit standing for districts where their members are alleged to reside. NAACP Opp. 6. This is incorrect. As the record now stands, the Court should issue summary judgment on districts where only NAACP members are alleged (but not shown) to reside. *See* Mem. 10 (listing districts).

Standing must be shown "with the manner and degree of evidence required at the successive stages of the litigation," which at the summary-judgment stage means "affidavit or other evidence." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). This requires that evidence be admissible or at least reducible to admissible evidence at trial. *Cottom v. Town of Seven Devils*, 30 F. App'x 230, 234 (4th Cir. 2002); *Ellison v. Inova Health Care Servs.*, 730 F. Supp. 3d 221, 230-31 (E.D. Va. 2024). Legislative Defendants did not know what

evidence NAACP Plaintiffs would submit in response to Legislative Defendants' motion for summary judgment. Now it is clear that the only evidence the NAACP Plaintiffs offer concerning their members is inadmissible and hence creates no material fact dispute.

The NAACP Plaintiffs rely on declarations, not of members, but of organizational witnesses containing hearsay assertions lacking foundation. The assertion that the NAACP Plaintiffs "received the permission of every individual whose voting records were produced," NAACP Opp. Ex. 4, Third Maxwell Decl. ¶ 3; NAACP Opp. Ex. 5, Second Phillips Decl. ¶ 3(a), is inadmissible hearsay. The assertion that organizational witnesses consulted entity records to confirm membership status is inadmissible because those documents have not been introduced and no effort to overcome a hearsay objection has been made. *See* Third Maxwell Decl. ¶¶ 4-5; Second Phillips Decl. ¶¶ 4-5. Assertions about these records also "violate[] Federal Rule of Evidence 1002, which recognizes the inherent unreliability of oral testimony about the contents of a document and so requires a party to introduce an 'original writing' to establish the document's contents." *In re Pfister*, 749 F.3d 294, 300 n.4 (4th Cir. 2014) (citations omitted). Moreover, those records could not be admissible because they were not produced with the NAACP Plaintiffs' initial disclosures. *See* Fed. R. Civ. P. 26(a)(1)(A)(ii); D.E. 63-1 at 16 (document request seeking all documents referenced in the NAACP Plaintiffs' initial disclosures). Legislative Defendants are prejudiced by the failure to produce these records, as there is no way to vet the accuracy of assertions about undisclosed documents. This material should not be admitted at trial.

In all events, the NAACP Plaintiffs are not entitled to summary judgment. Without admissible evidence, they are not entitled to *prevail* as *plaintiffs* on any issue. Moreover,

the NAACP Plaintiffs' evidence is subject to dispute. For example, the NAACP's witness could not recall how many members she spoke to, whether conversations were recorded in any way, or when they took place, Ex. 2, Maxwell Dep. (Vol. I) 84:8-88:4; could not confirm that all members identified were members throughout the litigation, Ex. 3, Maxwell Dep. (Vol. II) 77:17-24, 80:3-18; and could not tell how many total members NAACP had identified, *id*. 68:12-16. This undermines the NAACP Plaintiffs' assertions concerning members. Additionally, the NAACP Plaintiffs did not move for summary judgment by the court-ordered deadline. The Court would be required to provide "notice and a reasonable time to respond" if it were considering summary judgment *sua sponte*, Fed. R. Civ. P. 56(f)(1), especially given that Legislative Defendants are prejudiced by the deadline and length limits governing this filing.

C. Summary Judgment Is Warranted on the NAACP Plaintiffs' Vote Dilution Claims

No evidence establishes the NAACP Plaintiffs' standing to bring vote-dilution claims, as they have not established a cognizable injury in fact from vote dilution. Mem. 10-11. The NAACP Plaintiffs accuse Legislative Defendants of proposing a "heightened standard for associational standing," NAACP Opp. 9, but this is inaccurate. All vote-dilution plaintiffs must establish that they "live[] in a cracked or packed district." *Gill*, 585 U.S. at 69. To know whether an individual's vote is "diluted … as a result of cracking or packing," *id.* (alteration marks omitted), it is necessary to know what candidates the individual prefers. The NAACP Plaintiffs implicitly concede this point in their effort to show that each Plaintiff and disclosed member could reside in an alternative

district that would enable that individual to elect his or her candidate of choice. NAACP Opp. 6-8. But, without evidence of who those candidates are, there is no triable question on their standing.

The NAACP Plaintiffs say it should be enough "that 95%+ of Black voters coalesce around a single preferred candidate." *Id*. at 10. Setting aside whether the race of members can be established through admissible evidence, the Supreme Court rejected the idea that "a statistical probability" can establish standing. *Summers v. Earth Island Inst.*, 555 U.S. 488, 497 (2009). Nor is there merit in the NAACP Plaintiffs' concern that evidence of a plaintiff's preferred candidate is "unworkable." NAACP Opp. 10. It would not be difficult for an affidavit to state that an individual has voted in elections in a district and that the individual's preferred candidate has usually lost.

II. Summary Judgment Is Warranted on the Malapportionment Claims

Legislative Defendants demonstrated (Mem. 11-28) that this is not among the "unusual cases" where a legislative plan with a maximum population deviation below 10% can be deemed malapportioned. *Harris v. Ariz. Indep. Redistricting Comm'n*, 578 U.S. 253, 259 (2016). The NAACP Plaintiffs fail to create a triable question of fact. *See* NAACP Opp. 15-27.

A. No Evidence Shows a Systematic Policy of Under- and Over-Populating Districts

The NAACP Plaintiffs argue to the wrong standard by demanding that Legislative Defendants "justify" the small departure from mathematical perfection. NAACP Opp. 2. But the Supreme Court has "refused to require States to *justify* deviations" below 10%.

Harris, 578 U.S. at 259 (emphasis added). These "'minor deviations from mathematical equality'" do not "'make out a prima facie case of invidious discrimination under the Fourteenth Amendment so as to require *justification* by the State.'" *Id.* (citation omitted; emphasis added). The question is not whether the State can justify small deviations, but whether the NAACP Plaintiffs can prove "that a deviation of less than 10% reflects the predominance of illegitimate reapportionment factors." *Id.* At this stage, this high burden must be met with evidence of sufficient "caliber or quality to allow a rational finder of fact to find" predominance. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986).

The NAACP Plaintiffs have no such evidence. To begin, Legislative Defendants explained that the opinions of the NAACP Plaintiffs' expert (Mr. Fairfax) do not establish predominance because he offered no opinion about what (if anything) motivated the deviations. Mem. 17-18. The NAACP Plaintiffs do not dispute this point. *See* NAACP Opp. 22-23.

Instead, the NAACP Plaintiffs ask the Court to infer predominance from numbers and depictions of districts, coupled with color commentary. *See id.* at 18-23. But "it is elemental that counsel's arguments are not evidence in a case." *Long v. Hooks*, 972 F.3d 442, 463 (4th Cir. 2020), *as amended* (Aug. 26, 2020) (en banc). Moreover, the NAACP Plaintiffs purport only to establish that various district lines are "not justified" by "traditional criteria." NAACP Opp. 19; *see also id.* at 20 ("The deviations in this grouping are not justified by any legitimate criteria."), 20 ("This deviation is not explained by any legitimate redistricting criteria"), 21 ("This configuration serves no traditional redistricting criteria"), 22 ("This deviation is not explained by any legitimate redistricting criteria").

Where the Supreme Court has "refused to require States to justify deviations" below 10%, *Harris*, 578 U.S. at 259, a fact dispute over whether deviations are justified is not "material" under "the substantive law," *Anderson*, 477 U.S. at 248.

The NAACP Plaintiffs also do not refute Legislative Defendants' point that the county-grouping requirement explains the deviations to an unknown extent. Mem. 15-17. The NAACP Plaintiffs claim to have bypassed the county-grouping rules by a "cluster-based approach" which treats the county-grouping requirement as a non-factor and effectively ignores it. NAACP Opp. 18. But "maintaining the integrity of political subdivisions" is a legitimate criterion, *Harris*, 578 U.S. at 258, so the NAACP Plaintiffs needed evidence to prove its impact was somehow subordinate to illegitimate criteria. The NAACP Plaintiffs cannot prove a claim by redefining it to ignore legitimate criteria.

Next, the NAACP Plaintiffs claim to have created a triable question through concessions by "Defendants' own witnesses" that "political considerations drove" various configurations. NAACP Opp. 22-23. This is a red herring. Senator Hise and Mr. Springhetti testified that political considerations motivated the placement of territory into or outside given districts. *See* NAACP Opp. Ex. 13 at 471:1-16, 474:14-475:8; NAACP Opp. Ex. 14 at 145:19-146:15. They did *not* testify that the General Assembly systematically manipulated population deviations, i.e., that it deliberately "under-populated Republican-leaning districts and over-populated Democratic-leaning districts." *Raleigh Wake Citizens Ass'n v. Wake Cnty. Bd. of Elections*, 827 F.3d 333, 347 (4th Cir. 2016). As Legislative Defendants' opening memorandum explained (Mem. 13-15), the applicable standard requires proof, not merely that a legislature utilized political

criteria resulting in *incidental* deviations, but rather that the legislature *intended* the systematic under- and over-population of classes of districts. *Larios v. Cox*, 300 F. Supp. 2d 1320, 1327 (N.D. Ga.), *aff'd*, 542 U.S. 947 (2004). Even the most ardent proponents of the *Larios* doctrine acknowledge that "[p]olitical motivations will remain, resulting in population inequality here and there," such that "a district here or there [will be] out of balance for partisan benefit." *Harris v. Arizona Indep. Redistricting Comm'n*, 993 F. Supp. 2d 1042, 1098 (D. Ariz. 2014) (Wake, J., concurring in part, dissenting in part, and dissenting from the judgment). A malapportionment challenge, at a minimum, in a case like this must prove "systematic population inequality for party advantage that is not only provable but entirely obvious as a matter of statistics alone." *Id.*

Accordingly, it is dispositive that the NAACP Plaintiffs do not dispute the statewide deviation figures in Legislative Defendants' memorandum (Mem. 19-26). *See* NAACP Opp. 23. No "systematic policy" of under- and over-population, *Larios*, 300 F. Supp. 2d at 1327, could be proven here because it did not exist. Plaintiffs' suggestion that they are entitled to pick and choose districts to challenge under this theory would, if accepted, entitle challengers to gerrymander malapportionment challenges simply by identifying the over-populated districts reflecting a characteristic of their own choosing. But the selection of challenged districts reflects the NAACP Plaintiffs' motivation, not the General Assembly's motivation. The NAACP Plaintiffs ignore the fact that the same legislature that configured the districts they challenge also under-populated Democratic-leaning districts and over-populated Republican-leaning districts. *See* Mem. 20-26.

Even if the NAACP Plaintiffs could create a triable fact question, they cannot prevail at this stage. Setting aside that they did not move for summary judgment, a claim of predominant intent is nearly impossible for a *plaintiff* to establish as a matter of law. *See Hunt v. Cromartie*, 526 U.S. 541, 549-50 (1999) (reversing trial court's finding of predominant intent for a plaintiff on summary judgment). Here, the General Assembly's under-population of Democratic-leaning districts and over-population of Republican leaning districts (at a minimum) precludes summary judgment in the NAACP Plaintiffs' favor.

B. The NAACP Plaintiffs Seek to Circumvent *Rucho*

The malapportionment claim is barred by *Rucho v. Common Cause,* 588 U.S. 684 (2019).

Setting aside whether any *Larios* claim withstands *Rucho*, this one cannot. By disclaiming any need to prove systematic over- and under-population, NAACP Opp. 23, the NAACP Plaintiffs present a run-of-the-mill partisan-gerrymandering suit no different from that in *Rucho*. Their claim boils down to two contentions: (1) "political considerations drove" line drawing, *e.g.*, NAACP Opp. 23; and (2) the plans do not achieve mathematic perfection¸ *see id.* at 23-24. Far from a theory limited to "unusual cases," *Harris*, 578 U.S. at 259, the NAACP Plaintiffs' claim would succeed in virtually every case. The Supreme Court long ago recognized that "partisan districting is a … common practice," *Vieth v. Jubelirer*, 541 U.S. 267, 286 (2004) (plurality opinion), and legislative plans do not typically meet mathematic perfection (because they need not, *Harris*, 578 U.S. at 258). Hence, a claim that could succeed on proof of political line drawing plus departures from

mathematical perfection would "almost *always* [create] room for an election-impeding lawsuit contending that partisan advantage was the predominant motivation." *Vieth*, 541 U.S. at 286. *Rucho* rejects that possibility. *See* 588 U.S. at 703.

The NAACP Plaintiffs' theory is also devoid of any "limited and precise rationale." *Id.* (citation omitted). This Court has no way to know whether the political considerations cited in the NAACP Plaintiffs' evidence "went too far." *Id.* at 708. And, by depending almost entirely on assertions that districts "disregard[] traditional criteria," NAACP Opp. 20, the NAACP Plaintiffs ignore that *Rucho* found that fairness cannot "be measured by adherence to 'traditional' districting criteria." 588 U.S. at 706; *see also Banerian v. Benson*, 589 F. Supp. 3d 735, 736 (W.D. Mich. 2022) (three-judge court) (rejecting similar claim as "a blood relative of the claims of partisan gerrymandering" rejected in *Rucho*). *Rucho*'s discussion of one-person, one-vote claims does not help the NAACP Plaintiffs, *contra* NAACP Opp. 25, because the standard requires only that districts have "approximately" equal population, *see Rucho*, 588 U.S. at 709, not perfectly equal population. "[T]he one-person, one-vote rule is relatively easy to administer as a matter of math," *id.* at 708, precisely because of the 10% rule the NAACP Plaintiffs seek to undermine. And, while the NAACP Plaintiffs are correct that some courts have found viable malapportionment claims where a legislature "intentionally underpopulated districts," NAACP Opp. 24, they ignore that each of those cases depended on proof of a policy of systematic under- and over-population. Mem. 12-14. By disclaiming any intent or ability to prove that, NAACP Opp. 23, the NAACP Plaintiffs defeat their own recourse to those decisions.

Finally, the NAACP Plaintiffs do not address Legislative Defendants' argument that the Fourth Circuit has acknowledged that this type of claim rises or falls on the justiciability question governing partisan-gerrymandering claims more generally. Mem. 26. The NAACP Plaintiffs also ignore that the governing opinion in *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399 (2006), held that, "[e]ven in addressing political motivation as a justification for an equal-population violation … *Larios* does not give clear guidance." *Id.* at 423. *Rucho* does provide clear guidance, and it resolves this case as a matter of law.

CONCLUSION

The Court should grant the motion for partial summary judgment.

Respectfully submitted, this the 17th day of January, 2025.

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* *Appeared via Special Notice*

CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.3(d), I, Phillip J. Strach, hereby certify that the foregoing brief includes 3,107 words as indicated by Microsoft Word, excluding the caption, signature lines, certificate of service, and cover page.

This the 17th day of January, 2025.

NELSON MULLINS RILEY & SCARBOROUGH LLP

/s/ Phillip J. Strach
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CERTIFICATE OF SERVICE

I, Phillip J. Strach, hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will provide electronic notification to counsel of record.

This the 17th day of January, 2025.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SHAUNA WILLIAMS, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 1:23-CV-1057

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, et al.,

Plaintiffs,

v.

PHILIP BERGER, in his official capacity as the President Pro Tempore of the North Carolina Senate, et al.,

Defendants.

WILLIAMS PLAINTIFF SHAUNA WILLIAMS'S RESPONSE TO LEGISLATIVE DEFENDANTS' FIRST SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff Shauna Williams, by and through her attorneys, submits the following written objections and responses to Legislative Defendants' First Set of Interrogatories served on June 11, 2024.

INTERROGATORY NO. 2:

State whether you or any organization of which you are a member has drawn or created any alternative maps to the 2023 Plans. If you have drawn or created such maps, identify each individual involved in the development of each map you created, the software used to draw or create each map, and describe the criteria you or your organization used to draw or create each map.

RESPONSE:

Ms. Williams objects to this interrogatory because it seeks information that is neither relevant to her claims nor proportional to the needs of the case.

Subject to and without waiving the objections above, Ms. Williams responds that she has not drawn or created any alternative maps to the 2023 Plans, nor does she have knowledge of any organization of which she is a member having drawn or created any such alternative maps.

INTERROGATORY NO. 3:

Identify each district in the 2023 Congressional Plan you are challenging for each of your claims in the Complaint under the Fourteenth Amendment to the U.S. Constitution (Count I), the Fourteenth and Fifteenth Amendments to the U.S. Constitution (Count II), and Section 2 of the Voting Rights Act (Count III).

RESPONSE:

With respect to Count I, Ms. Williams challenges Congressional District 1. With respect to Counts II and III, Ms. Williams challenges the entire 2023 Congressional Plan.

Dated: July 11, 2024

By: /s/ Abha Khanna

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* *Special Appearance pursuant to Local Rule 83.1(d)*

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2024, the foregoing document was served via e-mail on all counsel of record for Defendants and Consolidated Plaintiffs.

/s/ Jyoti Jasrasaria

Exhibit 2

1 IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
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SHAUNA WILLIAMS, et al.,
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Plaintiffs,
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vs. Case No. 23-CV-1057
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REPRESENTATIVE DESTIN
7 HALL, etc., et al., Case No. 23-CV-1104
8 Defendants.
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10 NORTH CAROLINA STATE
CONFERENCE OF THE NAACP, et al.,
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Plaintiffs,
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PHILIP BERGER, etc., et al.,
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Defendants.
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15 The Remote Deposition of
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17 DEBORAH D. MAXWELL
18
19
20 October 25, 2024
21 9:30 a.m.
22
23
24
25 Cynthia Sullivan, RPR

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2

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1 THE NOTARY: May I have a
2 stipulation that I may swear in the witness
3 remotely?
4 MS. KLEIN: NAACP plaintiffs agree
5 to that. 09:29:41
6 MS. PROUTY: Legislative defendants
7 also agree to that.
8 DEBORAH D. MAXWELL, of lawful age, called
9 for examination, as provided by the Federal
10 Rules of Civil Procedure, being by me first
11 duly sworn, as hereinafter certified, deposed
12 and said as follows:
13 EXAMINATION OF DEBORAH D. MAXWELL
14 BY MS. PROUTY:
15 Q. Good morning. My name is Erika 09:30:03
16 Prouty. I'm an attorney for the legislative
17 defendants in this case. Thank you for being
18 here today. Could you please state your full
19 name for the record.
20 A. My name is Deborah Maxwell. 09:30:13
21 Q. May I call you President Maxwell?
22 A. That is fine.
23 Q. Just to confirm, all parties have
24 stipulated to the remote administration of your
25 oath and the taking of this deposition. 09:30:31

1 MS. KLEIN: Objection. Go ahead.
2 A. Yes.
3 Q. How did you obtain that
4 authorization?
5 A. By the impacted areas, you can look 11:38:36
6 at the map, correct, and see where the branches
7 are and the individuals.
8 Q. Did you talk to members and ask
9 them if you could file this lawsuit on their
10 behalf? 11:39:06
11 MS. KLEIN: Objection. Go ahead.
12 A. We have members who are in each
13 impacted area who have agreed that we have the
14 named plaintiffs, adults, who are not within
15 those areas that this lawsuit is about. 11:39:33
16 Q. President Maxwell, my question was
17 a little different. Did you talk to those
18 members and ask them if you could file this
19 lawsuit on their behalf?
20 MS. KLEIN: Objection. Go ahead. 11:39:47
21 A. Yes.
22 Q. Okay. When did those conversations
23 take place?
24 A. I cannot be specific, I'm sorry,
25 but it is over a span of time because it is 11:40:07

1 over the span of the state except for the west.
2 I wonder why.
3 Q. Is it your testimony that it was
4 before December 19th, 2023?
5 A. It was done. I cannot give you a 11:40:29
6 specific time.
7 Q. Who spoke to these members?
8 A. Myself and assisted by my first
9 vice president.
10 Q. Who is the first vice president? 11:41:05
11 A. Courtney Patterson.
12 Q. Did you say -- I'm sorry. Could
13 you repeat that name?
14 A. Courtney.
15 Q. Courtney Patterson? 11:41:18
16 MS. KLEIN: I'll just state the
17 First Amendment objection, although I
18 understand that Mr. Patterson is publicly
19 disclosed in that position. So you can go
20 ahead. 11:41:30
21 Q. How many members did you and
22 Mr. Patterson speak to to seek their
23 authorization to file this lawsuit on their
24 behalf?
25 A. I cannot give you a specific 11:41:37

1 number.
2 Q. Was it more than five?
3 A. Definitely.
4 Q. Was it more than ten?
5 A. Yes. 11:41:46
6 Q. Was it more than 20?
7 A. I did not do a count.
8 Q. How many members did you personally
9 speak to before filing this lawsuit?
10 A. I cannot give a specific number. 11:42:05
11 Q. Why is that?
12 A. I didn't check, you know, and do a
13 head count of that nature.
14 Q. Did you keep any records of these
15 conversations? 11:42:34
16 A. I don't have that privileged
17 information because I am working with
18 individuals who need to be protected because
19 within the state we have had crosses burned,
20 death threats, death calls for speaking out 11:43:15
21 even when one should speak out.
22 Q. President Maxwell, I want to just
23 focus you on what I'm asking. I'm asking prior
24 to filing this lawsuit in December of 2023,
25 it's your testimony that you talked to an 11:43:35

1 unspecified number of members to seek their
2 authorization to bring this case on their
3 behalf. I'm asking do you have records of the
4 people that you talked to?
5 MS. KLEIN: Objection. You can go 11:44:01
6 ahead.
7 A. It is hard to specifically answer
8 you because at the same time we were going
9 through another voting case, so I think our
10 interests merged, so I don't want to conflict 11:44:20
11 one with the other.
12 Q. What was that other case?
13 A. We had the voter ID trial that was
14 May of 2024 in Winston-Salem. We had another
15 case that was turned back, and so it is a 11:44:41
16 combination of those things.
17 Q. For either of those cases, were you
18 identifying members who lived in specific areas
19 of the state?
20 A. Was I? They are all melded, gelled 11:44:59
21 together.
22 Q. But sitting here today you can't
23 tell me whether you have any records of the
24 conversations you had prior to filing this
25 lawsuit with the members whose standing you're 11:45:25

1 asserting in this case; is that right?
2 A. I'm under oath, and I do not want
3 to say anything that is incorrect, so right now
4 I cannot correctly ascertain to make sure.
5 Q. I just want to be clear, the reason 11:45:53
6 that you cannot answer the question is because
7 you don't remember; is that right?
8 A. Who did I speak to for what? I
9 would have to be clear because I do not want to
10 say I did it for that when I did it for this. 11:46:10
11 Q. Okay. And is it your understanding
12 that you did this process of identifying
13 members in specific areas of the state for
14 those other cases?
15 A. Could you repeat that? 11:46:25
16 Q. Yeah. Is it your understanding
17 that you did this identification of members
18 living in specific areas of the state for those
19 other cases?
20 A. Could you rephrase that? 11:46:50
21 Q. In those other cases, and let's
22 start with the voter ID case, did you identify
23 members throughout certain areas of North
24 Carolina for purposes of the North Carolina
25 NAACP's claims in that case? 11:47:16

1 REPORTER'S CERTIFICATE
2 The State of Ohio,)
3 SS:
4 County of Cuyahoga.)
5
6 I, Cynthia Sullivan, a Notary
7 Public within and for the State of Ohio, duly
8 commissioned and qualified, do hereby certify
9 that the within named witness, DEBORAH D.
10 MAXWELL, was by me first duly sworn to testify
11 the truth, the whole truth and nothing but the
12 truth in the cause aforesaid; that the
13 testimony then given by the above-referenced
14 witness was by me reduced to stenotypy in the
15 presence of said witness; afterwards
16 transcribed, and that the foregoing is a true
17 and correct transcription of the testimony so
18 given by the above-referenced witness.
19 I do further certify that this
20 deposition was taken at the time and place in
21 the foregoing caption specified and was
22 completed without adjournment.
23
24
25

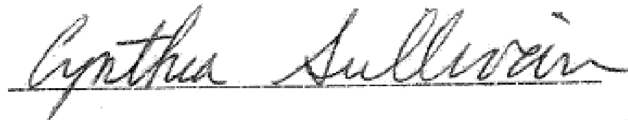
1 I do further certify that I am not
2 a relative, counsel or attorney for either
3 party, or otherwise interested in the event of
4 this action.
5 IN WITNESS WHEREOF, I have hereunto
6 set my hand and affixed my seal of office at
7 Cleveland, Ohio, on this 28th day of
8 October, 2024.
9
10
11
12

13
14 Cynthia Sullivan, Notary Public
15 within and for the State of Ohio
16
17 My commission expires October 17, 2026.
18
19
20
21
22
23
24
25

Exhibit 3

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
3 ~~~~~~~~~~~~~~~~~~~~
4 SHAUNA WILLIAMS, et al.,
5 Plaintiffs,
6 vs. Case No. 23-CV-1057
7 REPRESENTATIVE DESTIN
8 HALL, etc., et al.,
9 Defendants.
10 ~~~~~~~~~~~~~~~~~~~~
11 NORTH CAROLINA STATE
12 CONFERENCE OF THE NAACP, et al.,
13 Plaintiffs,
14 vs. Case No. 23-CV-1104
15 PHILIP BERGER, etc., et al.,
16 Defendants.
17 ~~~~~~~~~~~~~~~~~~~~
18 Deposition of
19 DEBORAH D. MAXWELL
20 Volume II
21
Thursday, October 31, 2024
22 10:00 a.m.
23
Taken via videoconference
24
25 Genevie Del Valle, Court Reporter

1 APPEARANCES:

2

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Lily Talerman, Esq.

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7 On behalf of the Plaintiffs;

8

Erika Prouty, Esq.

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11

On behalf of the Defendants.

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1 W I T N E S S I N D E X
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the North Carolina State Conference
16 of the NAACP 120
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1 THE COURT REPORTER: Can we have a
2 stipulation on the record that I may swear
3 the witness in remotely?
4 MS. KLEIN: NAACP plaintiffs agree
5 to a remote swearing in of the witness.
6 MS. PROUTY: Yes. She -- this is
7 a continuation of a depo, so she's been
8 under oath. So I think if we just renew
9 that, that's fine. But we consent to a
10 remote swearing in.
11 DEBORAH D. MAXWELL, of lawful age,
12 called by the Defendants for the purpose of
13 cross-examination, as provided by the Rules
14 of Civil Procedure, being by me first duly
15 sworn, as hereinafter certified, deposed
16 and said as follows:
17 EXAMINATION OF DEBORAH D. MAXWELL
18 BY MS. PROUTY:
19 Q. Good morning, President Maxwell. Thank you for
20 being here today. As a reminder, my name is
21 Erika Prouty, counsel for the legislative
22 defendants. We spoke last week at the first part
23 of your deposition.
24 I won't go through all the instructions we
25 went through last week. I will just remind you

1 paragraph of your affidavit states that you have
2 at least one member in -- I think it's four
3 different senate districts, I think it's 12
4 different house districts, and it's five
5 different congressional districts?
6 Do you see that?
7 A. Yes, I see.
8 Q. But this paragraph does not state how many total
9 members the NAACP --
10 A. Correct.
11 Q. -- has identified in this lawsuit.
12 So my questions are simply trying to
13 understand if you know, sitting here today, how
14 many total members there are that the NAACP has
15 identified for this lawsuit?
16 A. I cannot give you a numerical designation today.
17 Q. And of those -- that total number of members, can
18 you give me an estimate of how many you would be
19 able to name today?
20 Again, I'm not asking for the names. Do you
21 know how many names you would be able to identify
22 today?
23 A. I'm just counting the districts. Give me a
24 moment. I would just say at least one member out
25 of the areas today.

1 A. Yes.
2 Q. So again, this is the interrogatory response to
3 interrogatory number 4. The house districts
4 at -- where the NAACP has identified members are
5 listed here, and there's also District 71.
6 So the complaint had stated that the NAACP
7 had identified members in House District 8 and
8 25, and those districts are missing from this
9 response.
10 Can you explain why Districts 8 and 25 were
11 listed in the complaint, but are not listed in
12 this interrogatory number 4?
13 A. It might be membership because we did identify
14 people within districts.
15 Q. What do you mean it might be membership?
16 A. It has to be continuous.
17 Q. So there were members who you had identified in
18 the complaint, and then they were no longer
19 members as of the time of this interrogatory
20 response?
21 A. Possibly. I'm trying to think that -- why that
22 is listed and they are not there, and that did
23 occur. I cannot say which district or which
24 house or whatever at this time.
25 Q. Did you determine that the North Carolina NAACP

1 A. Membership must have been identified meeting the
2 criteria of where they resided.
3 Q. So did you have members who dropped out when you
4 were preparing the interrogatory response and
5 then new members were added when you were
6 preparing this affidavit?
7 MS. KLEIN: Objection.
8 You can answer to the best of your
9 ability.
10 A. To the best of my ability, yes, we had members
11 who became ineligible or some who did not wish to
12 participate.
13 Q. Can you tell me whether these are the same
14 members over the course of the litigation?
15 A. No. I just knew, you know, people met the
16 criteria, lived in the area, and then said no.
17 Q. And that's because membership is fluid, right?
18 A. Yes.
19 Q. And when you said they said no, what do you mean?
20 A. They chose not to be a participant, which is
21 their God-given right.
22 Q. So you had members who were at one time willing
23 to be a participant, but then who no longer
24 wished to be a participant; is that right?
25 MS. KLEIN: Objection.

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2
3
4 C E R T I F I C A T E
5
The State of Ohio,) SS:
6 County of Cuyahoga.)
7
I, Genevie del Valle, a Notary Public
8 within and for the State of Ohio, authorized to
administer oaths and to take and certify
9 depositions, do hereby certify that the
above-named witness was by me, before the giving
10 of their deposition, first duly sworn to testify
the truth, the whole truth, and nothing but the
11 truth; that the deposition as above-set forth was
reduced to writing by me by means of stenotypy,
12 and was later transcribed into typewriting under
my direction; that this is a true record of the
13 testimony given by the witness; that the deponent
or a party requested that the deposition be
14 reviewed by the deponent; that said deposition
was taken at the aforementioned time, date and
15 place, pursuant to notice or stipulations of
counsel; that I am not a relative or employee or
16 attorney of any of the parties, or a relative or
employee of such attorney or financially
17 interested in this action.
18 IN WITNESS WHEREOF, I have hereunto set my
hand and seal of office, at Cleveland, Ohio, this
19 15th day of November 2024.
20
21 Genevie del Valle
22 ____
Genevie del Valle
23 Notary Public, State of Ohio
My commission expires September 28, 2028
24
25