

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

Civil Action No. 5:19-CV-00452

REBECCA HARPER, et al.,

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS,  
in his official capacity as Senior Chairman of  
the House Select Committee on Redistricting,  
et al.,

Defendants.

**NOTICE OF RELATED CASE**

Plaintiffs Rebecca Harper et al. hereby notify the Court that the above-captioned case, *Harper v. Lewis*, No. 5:19-cv-00452 (E.D.N.C.), is related under Local Civil Rule 40.3 to another case that was pending in this Court, styled *Common Cause v. Lewis*, No. 5:18-cv-00589-FL (E.D.N.C.). *Harper* should be assigned to Judge Flanagan, who was the judge in *Common Cause*.

*Harper*, No. 5:19-cv-00452, is a state constitutional challenge, filed on September 27, 2019 in Wake County Superior Court, to North Carolina's 2016 congressional redistricting plan. Defendants are David R. Lewis, in his official capacity as the Senior Chair of the House Standing Committee on Redistricting; Ralph E. Hise, Jr., in his official capacity as a co-Chair of the Senate Standing Committee on Redistricting; Warren Daniel, in his official capacity as co-Chair of the Senate Standing Committee on Redistricting; Paul Newton, in his official capacity as a co-Chair of the Senate Standing Committee on Redistricting; Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives; and Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate

(collectively, “Legislative Defendants”), along with the State Board of Elections and its members. Legislative Defendants removed the case to this Court on October 14, 2019.

*Common Cause*, No. 5:18-cv-00589-FL, involved a state constitutional challenge to North Carolina’s 2017 state legislative redistricting plans. It was filed in Wake County Superior Court on November 13, 2018, removed to this Court on December 14, 2018, and remanded on January 2, 2019. The Wake County Superior Court entered final judgment against defendants on September 3, 2019, holding that the 2017 state legislative plans violated the North Carolina Constitution. Defendants did not appeal.

*Harper* and *Common Cause* meet the definition of related cases under Local Civil Rule 40.3 for three independent reasons. First, the cases “concern substantially the same parties.” Local Civ. R. 40.3(a)(1). The defendants are identical—in both cases, the defendants are the State Board of Elections and its members, the chairs of the North Carolina House and Senate standing committees on redistricting, and the speaker of the North Carolina House and the president pro tempore of the Senate, all sued in their official capacity. And 11 of the 14 plaintiffs in *Harper* were also plaintiffs in *Common Cause*.

Second, “the cases call for a determination of the same or substantially related or similar questions of law.” Local Civ. R. 40.3(a)(2). In particular, in *Common Cause*, this Court addressed whether Legislative Defendants could remove a state constitutional challenge to redistricting plans under the Refusal Clause, 28 U.S.C. § 1443(2), and held that they could not. In *Harper*, Legislative Defendants have once again attempted to remove a state constitutional challenge to redistricting plans under the Refusal Clause. Legislative Defendants in their notice of removal acknowledge in a footnote that the cases present the same legal question under the Refusal Clause. ECF No. 5 at 14-15 n.2. Indeed, highlighting the identical nature of the legal

question in the two cases, Legislative Defendants simply assert that they believe that the remand decision in *Common Cause* was “erroneous.” *Id.*

Third, “there will be an unduly burdensome duplication of labor and expense ... if the cases are conducted before different judges.” Local Civ. R. 40.3(a)(3). Judge Flanagan considered and decided on an emergency basis Legislative Defendants’ arguments for removal under the Refusal Clause earlier this year. Plaintiffs intend to file an emergency motion to remand in this matter and to request expedited treatment in light of the fact that the state court has scheduled a hearing on Plaintiffs’ motion for a preliminary injunction on October 24, 2019. There is no need to burden a different judge with a duplicative effort to resolve on an emergency basis a removal under the Refusal Clause identical to the one Judge Flanagan rejected earlier this year in *Common Cause*.

Respectfully submitted this 14th day of October, 2019.

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*\*Pro Hac Vice motions forthcoming.*

## CERTIFICATE OF SERVICE

I hereby certify that on this date, October 14, 2019, I caused the foregoing document to be filed and served on all counsel of record by operation of the CM/ECF system for the United States District Court for the Eastern District of North Carolina. I further certify that simultaneously with this filing via CM/ECF, I caused the foregoing document to be served by electronic mail on all counsel of record for all Defendants in the Superior Court case.

DATED: October 14, 2019

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