

**IN THE CHANCERY COURT OF TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT**

TELISE TURNER,)
GARY WYGANT, and)
FRANCIE HUNT,)

Plaintiffs,)

v.)

BILL LEE, Governor,)
TRE HARGETT, Secretary of State,)
MARK GOINS, Tennessee Coordinator)
of Elections; all in their official)
capacity only,)

Defendants.)

CASE NO. 22-0287-IV

THREE-JUDGE PANEL
CHANCELLOR PERKINS, CHIEF
CHANCELLOR MARONEY
CIRCUIT JUDGE SHARP

PLAINTIFFS’ NOTICE OF FILING AFFIDAVIT OF JONATHAN CERVAS

Plaintiffs hereby notify the Court of the filing of the attached Affidavit of Plaintiffs’ expert witness, Dr. Jonathan Cervas.

Without contacting counsel beforehand, Defendants filed a discovery motion on February 22, 2023, accusing Plaintiffs, and counsel, of improperly changing the evidence in the record without notifying the Parties or the Court. In short, Defendants accuse Plaintiffs of altering one of the illustrative maps Dr. Cervas created by secretly editing the map and then intentionally rerouting a web address that had been included in one of Dr. Cervas’s expert reports, such that the old web address would now pull up a new, edited map, rather than the original map.

Had Defendants taken the time and had the courtesy to contact Plaintiffs’ counsel prior to lodging allegations of impropriety, they would have learned that neither Plaintiffs’ counsel nor Dr. Cervas knew the web address in his expert report was linked to the edited version of the original map. Rather, after Defendants criticized the original map in their summary judgment papers, Dr.

Cervas created a new map on his own time, for his own edification, without the knowledge of Plaintiffs' counsel, and he saved the new map with a new file name. He did not realize when he did so that the new, edited map would be linked to the original web address included in his report. Like Plaintiffs' counsel, Dr. Cervas did not realize the issue raised by Defendants had occurred at all, and he certainly did not mean to link his new, edited map to the old web address.

Upon learning of the issue from Defendants' February 22, 2023, discovery motion, Dr. Cervas promptly rerouted the web address to the correct original map. Thus, the web address in Dr. Cervas's January 9, 2023, report now links to the map it originally linked to, not to the new, edited map. The new map that prompted Defendants to cry foul is not in the record.

Plaintiffs will ask Defendants to withdraw their motion on the basis of Dr. Cervas's affidavit. If Defendants are unwilling to do so, Plaintiffs will file a formal response to Defendants' Motion on or before Wednesday, March 1, 2023.

Dated: February 24, 2023

Respectfully submitted,

/s/ Scott P Tift

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing *Plaintiffs' Notice of Filing Affidavit of Jonathan Cervas* will be served on the following counsel for the defendants via electronic and U.S. mail on February 24, 2023.

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I hereby certify that a true and exact copy of the foregoing *Plaintiffs' Notice of Filing Affidavit of Jonathan Cervas* will be served on the following counsel for the defendants via electronic mail on February 24, 2023.

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/s/ Scott P Tift
Scott P. Tift

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AFFIDAVIT OF JONATHAN CERVAS

I, Jonathan Cervas, under penalty of perjury, do hereby attest as follows:

1. The plaintiffs in this lawsuit retained me to act as an expert witness to evaluate and opine on the legislative redistricting maps enacted in 2022 by the State of Tennessee's General Assembly. In that capacity, I have produced two expert reports, a rebuttal report, and a supplemental report, and I have been deposed.

2. I submit this affidavit to explain the issue raised in Defendants' February 22, 2023, Motion to Strike Untimely Affidavit and Rebuttal Expert Report Filed as Exhibit O to Plaintiffs' Motion for Summary Judgment and for Evidentiary Sanctions (hereinafter, "Defendants' Motion"). I also submit this affidavit to inform the Court and the parties of the steps I have taken to address the issue.

3. On January 9, 2023, the plaintiffs produced an affidavit from me with an attached supplemental expert report titled, "Response to Defendants' Expert Depositions Regarding

Tennessee State House Reapportionment.” This supplemental report disclosed a new illustrative map I created in response to criticism Defendants’ experts had made about my prior illustrative maps during their recent depositions.

4. In this January 9, 2023, report, I referred to the new illustrative map as Cervas House Map 13d_e because this map minimally revised a prior map I had previously produced, labeled Cervas House Map 13d. The report described this map and also included a web address, which a reader could click on or paste into a web browser to see the new map on the internet on the redistricting application I have used for this litigation, called Dave’s Redistricting App.

5. On January 20, 2023, Defendants filed a Motion for Summary Judgment. Plaintiffs’ counsel sent me a copy of Defendants’ memorandum in support. Therein, Defendants criticized the illustrative map I had produced on January 9, 2023 (Cervas House Map 13d_e) for containing a small number of House districts with non-contiguous census blocks. By non-contiguous census blocks, I mean small geographic areas assigned to a House district that are not geographically contiguous to the rest of the district.

6. At some point after reading this criticism, I opened Cervas House Map 13d_e on my computer to identify the non-contiguities. Non-contiguities are easy to fix, and once I identified the non-contiguities Defendants had pointed out, I corrected them and created a new map, which I titled “Cervas House Map 13d_e2.” I did not tell Plaintiffs’ counsel or anyone else involved in this lawsuit that I had corrected them, because I did not realize that I had done so in a way that would affect the reports or pleadings in the case. Unfortunately, I did not realize this new map remained linked to the web address in my January 9, 2023, report. That possibility did not cross my mind, but I would have assumed the web address in my January 9, 2023, report remained linked to the prior map, Cervas House Map 13d_e.

7. I created this new, corrected map for my own edification, as proof to myself that the non-contiguities addressed by Defendants could easily be corrected without undermining the map itself, which scored better on all relevant redistricting metrics as compared to the Enacted House Map. Neither Plaintiffs nor their counsel asked me to do so, and I understand Plaintiffs' counsel did not learn that I had done so until receiving Defendants' Motion on February 22, 2023.

8. I regret the fact that my decision to revise Cervas House Map 13d_e inadvertently led to the issue raised by Defendants' Motion. I did not realize the web address in my January 9, 2023, report became linked to the new map, rather than remaining linked to the original Cervas House Map 13d_e. My intention was to create a new version, which would have its own unique web address. Now, having had this issue brought to my attention by Defendants' Motion, I have corrected this routing issue by reconnecting the web address from my January 9, 2023, report to the original Cervas House Map 13d_e.

9. This issue arose inadvertently, without me realizing the web address from my January 9, 2023, report had been paired with my new map. I had absolutely no intention of altering the map linked to the web address in my January 9, 2023, report, and I certainly did not make this change on purpose with an intent to deceive the Parties or the Court. To the contrary, this was an entirely inadvertent change, and I was not aware of it until Defendants raised the issue.

10. Now that I am aware of the issue, I have rerouted the web address in my January 9, 2023, report. Thus, Cervas House Map 13d_e is once again the map connected to that web address, and the issue raised by Defendants has been resolved.

[Signature on following page]

I hereby swear that the above-stated testimony is true and accurate to the best of my knowledge and memory.

Jonathan Cervas 2/24/2023
JONATHAN CERVAS DATE

STATE OF PENNSYLVANIA
COUNTY OF ALLEGHENY

Signed, sworn to, and acknowledged before me by Jonathan Cervas, this is the 24 day of February, 2023.

My Commission Expires: 06/06/2025

Commonwealth of Pennsylvania - Notary Seal
JASON MARTIN, Notary Public
Allegheny County
My Commission Expires June 6, 2025
Commission Number 1313284

Jason Martin
NOTARY PUBLIC