

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

FRANCIE HUNT, TELISE TURNER, and GARY
WYGANT,

Plaintiffs,

v.

CASE NO. 22-0287-IV
Chancellor Perkins
Chancellor Maroney
Judge Sharp

WILLIAM LEE, as Governor of Tennessee, in his
official capacity; TRE HARGETT, as Tennessee
Secretary of State, in his official capacity; and MARK
GOINS, as Tennessee Coordinator of Elections, in his
official capacity,

Defendants.

**DEFENDANTS' MOTION TO STRIKE UNTIMELY AFFIDAVIT AND REBUTTAL
EXPERT REPORT FILED AS EXHIBIT O TO PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND FOR EVIDENTIARY SANCTIONS**

Defendants William Lee, Tre Hargett, and Mark Goins, in their official capacities only, move to strike Exhibit O to Plaintiffs' Motion for Summary Judgment, consisting of Dr. Jonathan Cervas's untimely rebuttal expert report and affidavit, from the record. Defendants also move for evidentiary sanctions including disqualification of Dr. Cervas and rejection of any testimony or evidence he may offer in this matter.

As Exhibit O to their motion for summary judgment, Plaintiffs attached an affidavit from Dr. Cervas and a supplemental expert report titled Response to Defendants' Expert Depositions Regarding Tennessee State House Reapportionment. The report, dated January 9, 2023, introduces map Cervas 13d_e, which as discussed in Defendants' motions to disqualify and for summary judgment is unconstitutional. Indeed, the report in Exhibit O superficially appears identical to the report that is the subject of Defendants' Motion to Disqualify Jonathan Cervas or in the Alternative

Strike His Untimely Supplemental Expert Report.

Except it isn't. The report in Exhibit O purports to reference map Cervas 13d_e via URL: <https://davesredistricting.org/join/ab9f8923-5638-45d1-98f6-e01318aa81ca>. That link now reflects a brand new map, Cervas 13d_e2, which Plaintiffs gave Defendants no notice of. There is no indication of when Cervas 13d_e became Cervas 13d_e2, only that it likely occurred after January 9, 2023 and perhaps after the apparent constitutional flaws in Cervas 13d_e were pointed out in the motion to disqualify. The report is identical, with the same date, and same text. Only now Cervas 13d_e does not exist and Cervas 13d_e2 has replaced it. Shielded from the discovery process, Cervas 13d_e2 is now part of the record in this case. And it shouldn't be.

Expert discovery in this case is closed, summary judgment briefing is ongoing, and Plaintiffs sought neither the agreement of the Defendants, nor leave of this Court to submit a new map after the discovery deadline as required by the Agreed Discovery Scheduling Order. Nor did Plaintiffs inform Defendants of the existence of Cervas 13d_e2.

At a minimum, Exhibit O should be stricken from the record. The prejudice to Defendants is evident, as is the defiance of the Agreed Discovery Scheduling Order's provision that "[s]upplemental expert opinions or other expert disclosures not timely disclosed may be excluded at trial." (*See* Agreed Discovery Scheduling Order, ¶ 4).

But it's worse than that. Now that Dr. Cervas has moved beyond his expert reports, it is impossible to ensure that it would not taint his testimony in this matter, forcing Defendants to defend against whatever else Plaintiffs' expert witness has done without disclosure. It also appears that the original version of Cervas 13d_e may be spoliated, as the URL has not changed, strongly implying that it has been overwritten. Accordingly, Defendants must move for evidentiary

sanctions including disqualification of Dr. Cervas and rejection of any testimony or evidence he may offer in this matter.

In support of this motion, Defendants rely upon a contemporaneously filed memorandum of law and supporting exhibits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed and served electronically upon the following on this 22nd day of February, 2023:

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