

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
NO. 1:13-CV-00949**

**DAVID HARRIS; CHRISTINE
BOWSER; and SAMUEL LOVE,**

Plaintiffs,

v.

**PATRICK MCCRORY, in his capacity
as Governor of North Carolina; NORTH
CAROLINA STATE BOARD OF
ELECTIONS; and JOSHUA HOWARD,
in his capacity as Chairman of the North
Carolina State Board of Elections,**

Defendants.

**PLAINTIFFS' AND DEFENDANTS'
JOINT MOTION TO AMEND
THE SCHEDULING ORDER,
OR IN THE ALTERNATIVE,
FOR LEAVE TO CONDUCT
DEPOSITION OUT OF TIME**

Pursuant to F. R. Civ. Pro. 16, 26, and 30, Plaintiffs and Defendants hereby respectfully move the Court to amend its May 7, 2015 Scheduling Order (ECF Doc. No. 91) (the "Scheduling Order") for the sole purpose of extending the deadline for the parties to conduct the deposition of Defendants' expert witness Dr. Thomas B. Hofeller; or in the alternative, to grant leave to the parties to conduct Dr. Hofeller's deposition out of time. In support whereof, the parties show the Court as follows:

1. The Scheduling Order provides that the parties shall have served any additional expert reports no later than June 1, 2015; that discovery shall be complete and that the parties shall file with this Court a copy of the state trial-court's record in *Dickson v. Rucho* no later than July 1, 2015; that the parties shall submit trial briefs no later than September 21, 2015; and that this matter shall be set for trial on October 13, 2015.

2. Defendants have timely served their Second Expert Report of Dr. Thomas B. Hofeller, Ph.D. In response, Plaintiffs' counsel have been in communication with Defendants' counsel regarding the scheduling of Dr. Hofeller's deposition.

3. On July 13, 2015, undersigned counsel will begin a multi-week trial in this Court before the Hon. Thomas Schroeder, United States District Judge, in connection with three consolidated cases concerning the constitutionality of N.C. Sess. L. 2013-381 (the "Voter Information Verification Act" or "VIVA").¹ Undersigned counsel anticipate that the trial may last for several weeks (roughly until the end of July, perhaps slightly earlier or later). Dr. Thomas Hofeller is an expert witness in that case, and he may testify at trial.

4. On August 24, 2015, Defendants' undersigned counsel are scheduled to begin another VIVA-related trial before the Hon. Michael Morgan, North Carolina State Superior Court Judge, in a civil action captioned *Currie v. State of North Carolina*, 13-CVS-149 (Orange County, North Carolina).

5. Due to these forthcoming trials, undersigned counsel need additional time to prepare for and schedule the deposition of Defendants' expert witness Dr. Thomas Hofeller in this case. If the status of the *Currie* trial date were to change, counsel anticipate that it may be possible to conduct Dr. Hofeller's deposition in late August;

¹ All but one of Plaintiffs' undersigned counsel represent the plaintiff-intervenors (Louis Duke and others) in *League of Women Voters of North Carolina, et al. v. State of North Carolina, et al.*, No. 1:13-CV-660 (M.D.N.C.). Defendants' undersigned counsel represent the defendants in that case, as well as other defendants in two additional cases that have been consolidated therewith for purposes of discovery and trial.

however, if the *Currie* trial date continues to pose a scheduling conflict, counsel anticipate that it may be necessary to conduct Dr. Hofeller's deposition during the first week of September. Counsel believe that an extension of the deadline to conduct Dr. Hofeller's deposition (up to and including Friday, September 11, 2015) will allow them to accommodate their respective scheduling conflicts, as well as those of the expert witness. Counsel will confer and negotiate in good faith to agree upon a deposition date that is suitable for the schedules of undersigned counsel and the expert witness.

6. The relief requested in this Motion will not affect other deadlines set forth in the Scheduling Order and will not delay the progress of this litigation.

7. A proposed Order is being submitted contemporaneously herewith for the Court's consideration.

WHEREFORE, the parties respectfully pray the Court to amend its Scheduling Order for the sole purpose of extending the deadline for the parties to conduct the deposition of Defendants' expert witness Dr. Thomas B. Hofeller (up to and including Friday, September 11, 2015); or in the alternative, to grant leave to the parties to conduct such deposition out of time.

Respectfully submitted, this the 23rd day of June, 2015.

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*Local Rule 83.1
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*Co-counsel for Defendants North
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Joshua Howard, in his capacity as
Chairman of the North Carolina State
Board of Elections*

CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing **PLAINTIFFS' AND DEFENDANTS' JOINT MOTION TO AMEND THE SCHEDULING ORDER, OR IN THE ALTERNATIVE, FOR LEAVE TO CONDUCT THE DEPOSITION OF DR. THOMAS B. HOFELLER OUT OF TIME** to be made by electronic filing with the Clerk of the Court using the CM/ECF System, which will send a Notice of Electronic Filing to all parties with an e-mail address of record, who have appeared and consent to electronic service in this action.

This the 23rd day of June, 2015.

/s/ Edwin M. Speas, Jr.

Edwin M. Speas, Jr.

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[PROPOSED]

**ORDER GRANTING THE PARTIES'
JOINT MOTION TO AMEND
THE SCHEDULING ORDER**

This matter comes before the Court upon the Plaintiffs' and Defendants' Joint Motion to Amend the Scheduling Order, or in the Alternative, for Leave to Conduct Deposition Out of Time (the "Motion").

In their Motion, the parties have moved the Court to amend its May 7, 2015 Scheduling Order (ECF Doc. No. 91) (the "Scheduling Order") for the sole purpose of extending the deadline for the parties to conduct the deposition of Defendants' expert witness Dr. Thomas B. Hofeller (up to and including Friday, September 11, 2015). The Court is of the opinion that good cause exists to grant the Motion (and that the Court therefore does not need to reach the alternative request for relief).

The Court therefore ORDERS, ADJUDGES, and DECREES that the parties may conduct the deposition of Defendants' expert witness Dr. Thomas B. Hofeller no later

than September 11, 2015. Nothing in this Order shall be construed as modifying any other provision of the Scheduling Order.

IT IS SO ORDERED, this the ____ day of June, 2015.

By: _____
William L. Osteen, Jr.
United States Chief District Court Judge
Middle District of North Carolina