

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
NO. 1:15-CV-00399-TDS-JEP**

SANDRA LITTLE COVINGTON, *et al.*,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, *et al.*,

Defendants.

**NON-PARTY SCOTT FALMLEN'S
MOTION TO QUASH
SUBPOENA *DUCES TECUM*
(Fed. R. Civ. P. 45(d)(3))**

Mr. Scott Falmlen (“Mr. Falmlen”), by and through undersigned counsel, pursuant to Fed. R. Civ. P. 45(d)(3), hereby moves this Court to quash the subpoena *duces tecum* issued to him by Defendants on April 4, 2016 (the “Subpoena”). In support of this Motion, and as further detailed in his Memorandum in Support of Motion to Quash Subpoena *Duces Tecum*, Mr. Falmlen shows the Court as follows:

1. On April 4, 2016, Defendants issued the Subpoena to Mr. Falmlen, a non-party to this action.
2. The Subpoena requires Mr. Falmlen to appear and testify at trial on April 15, 2016 at 10:00 A.M. at the federal courthouse in Greensboro, North Carolina. The Subpoena does not seek the production of any documents.
3. The Subpoena imposes an undue burden on Mr. Falmlen and requires disclosure of privileged matter, namely, information that has the potential of infringing upon the First Amendment associational rights of Mr. Falmlen and other third parties.

WHEREFORE, Mr. Falmlen respectfully requests that the Court grant an order quashing the Subpoena, awarding his reasonable costs and attorney's fees, and other and further relief as the Court deems just and proper.

This the 14th day of April, 2016.

/s/ Jim W. Phillips, Jr.

Jim W. Phillips, Jr.
N.C. State Bar No. 12516
**BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.**
Post Office Box 26000
Greensboro, NC 27420-6000
Telephone: 336/373-8850
jphillips@brookspierce.com

Attorney for Scott Falmlen

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 37.1, the undersigned certifies that after personal consultation and diligent attempts to resolve differences, the parties are unable to reach an accord. On April 13, 2016, Jim W. Phillips (for non-party Scott Falmlen) consulted in person with Thomas A. Farr (for Defendants). Mr. Phillips communicated his concerns that Defendants will seek to elicit testimony from Mr. Falmlen regarding privileged information, including, specifically, the identities of individuals who had funded the litigation. Mr. Farr indicated that he intended to inquire of Mr. Falmlen regarding the same topics that had been identified in proposed deposition notices to Plaintiffs' counsel earlier in this litigation. In addition, he indicated that he would inquire into the identity of the individuals who had funded the litigation. Finally, Mr. Farr indicated that if Mr. Falmlen and his counsel had concern regarding inquiry into these issues, they should file a motion to quash.

This the 14th day of April, 2016.

/s/ Jim W. Phillips, Jr.

Jim W. Phillips, Jr.

CERTIFICATE OF SERVICE

I, Jim W. Phillips, Jr., hereby certify that I have this day electronically filed the foregoing NON-PARTY SCOTT FALMLEN'S MOTION TO QUASH SUBPOENA *DUCES TECUM* with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

Alexander M. Peters
Special Deputy Attorney General
Office of the Attorney General
P.O. Box 629
Raleigh, NC 27602
apeters@ncdoj.gov
kmurphy@ncdoj.gov

Counsel for Defendants

Thomas A. Farr
Phillip J. Strach
Michael D. McKnight
Ogletree, Deakins, Nash, Smoak
& Stewart, P.C.
4208 Six Forks Road, Suite 1100
Raleigh, NC 27602
Thomas.farr@ogletreedeakins.com
Phillip.strach@ogletreedeakins.com
Michael.mcknight@ogletreedeakins.com

This the 14th day of April, 2016.

/s/ Jim W. Phillips, Jr.

Jim W. Phillips, Jr.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
NO. 1:15-CV-00399-TDS-JEP**

SANDRA LITTLE COVINGTON, *et al.*,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, *et al.*,

Defendants.

ORDER

Non-party Scott Falmlen has moved the Court to quash the subpoena *duces tecum* issued to him by Defendants on April 4, 2016.

For good cause as shown by Mr. Falmlen, **IT IS HEREBY ORDERED** that Scott Falmlen's Motion to Quash Subpoena *Duces Tecum* is **GRANTED**.

So ordered, this the ____ day of April, 2016.

By: _____