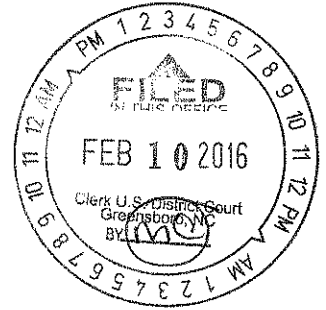


UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
1:15-CV-399



SANDRA LITTLE COVINGTON, et al.,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, et al.,

Defendants.

**ORDER ON PLAINTIFFS'
MOTION TO ENFORCE
SCHEDULING ORDER**


Plaintiffs have moved to enforce the scheduling order this Court entered on October 9, 2015, which included a deadline for defendants' disclosure of expert witness reports on November 30, 2015. (Doc. 47). Because the defendants did not timely disclose an expert report by Dr. Barry Burden or previous testimony by Dr. Stephen Ansolabehere functionally equivalent to an expert report, the Court will grant the motion to the extent those witnesses are to be deposed as experts. *See Southern States Rack & Fixture, Inc. v. Sherwin-Williams Co.*, 318 F.3d 592, 594 (4th Cir. 2003).

In their brief to this Court the defendants say they want the Court to consider Dr. Ansolabehere's "opinion" about a compactness test and characterize the reports by Dr. Ansolabehere and Dr. Burden as "these two expert reports." Doc. 52 at 4. Defendants' own verbiage thus suggests their intent to pursue expert opinions and testimony with Dr. Ansolabehere and Dr. Burden. Yet the defendants are silent as to why they did not advise plaintiffs by the deadline that they intended to rely on these reports, as required by the

Court's scheduling order.¹ The defendants' failure to timely disclose these expert witness reports was not substantially justified nor is it harmless.

Therefore, for good cause shown, it is **ORDERED** that plaintiffs' motion to enforce the scheduling order (Doc. 47) is **GRANTED**, and that pursuant to Fed. R. Civ. P. 26(a)(2) & 37(c)(1), defendants are not allowed to offer expert reports or testimony from Dr. Burden or Dr. Ansolabehere in connection with the merits of this action. To the extent non-expert-related depositions remain to be taken, the parties have until February 19, 2016, per this Court's order of December 18, 2015.

So ordered, this the 10th day of February, 2016.


UNITED STATES DISTRICT JUDGE
For the Court

¹ In its scheduling order, the Court directed that "Defendants shall disclose all expert reports by November 30, 2015." Doc. 25.