

**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.

**PLAINTIFFS' BRIEF IN
OPPOSITION TO MOTION TO
MODIFY THE SCHEDULING
ORDER**

Pursuant to Local Rule 7.2, Plaintiffs, by and through their undersigned counsel, submit the following response brief in opposition to Defendants' Motion to Modify the Scheduling Order. (D.E. 67).

INTRODUCTION

There are four pending suits challenging the legislative and congressional districts enacted by the North Carolina General Assembly in 2011. There is no third party controlling this case and any other pending lawsuit. Defendants seek to re-open discovery so that they may pursue their imagined hypothesis that some non-party person or entity is controlling four separate lawsuits brought by a diverse group of citizens residing across the state. There is no legal or factual basis for this imagined hypothesis, and the motion to re-open discovery should be denied.

Plaintiffs in this action are 31 individual North Carolina residents. None of the Plaintiffs are plaintiffs in any of the three other pending lawsuits. Defendants first sought to deny Plaintiffs their day in court when they filed a motion to stay, abstain or defer this

action on November 9, 2015. (D.E. 31). On November 25, this Court denied that motion, stating that Defendants' arguments were "unconvincing." This Court rejected Defendants' claims that "one or more of the Plaintiffs in this action may be bound by the judgment in *Dickson* under the doctrines of res judicata (claim preclusion) or collateral estoppel (issue preclusion)." (D.E. 39). Three months of discovery and dozens of depositions later, nothing has changed. Defendants still cannot establish any privity between these Plaintiffs and those individual and organizational (NC State Conference of NAACP Branches, League of Women Voters of NC, Democracy NC, NC A. Philip Randolph Institute) plaintiffs in the state cases of *Dickson v. Rucho* and *NC NAACP v. NC* or the individual plaintiffs in the federal case of *Harris v. McCrory*. Instead, they seek to expand the discovery period, without good cause, to engage in a fishing expedition for non-existent facts to support their theory of attenuated privity of which Defendants cannot offer one case in support.

STATEMENT OF FACTS

Plaintiffs are a diverse group of citizens residing in communities across the state, including students, small business owners, and retirees. *See, e.g.*, Crystal Johnson Dep. p. 34 (student); Mark Englander Dep. p. 9 (entrepreneur who owns electric bicycle business); Juanita Rogers Dep. p. 11 (retired school librarian) (excerpts of the depositions of Crystal Johnson, Mark Englander and Juanita Rogers are attached hereto as Exhibits A, B, and C). These ordinary citizens are united by a common concern: they believe that

assigning citizens to electoral districts based on the color of their skin is a threat to democracy and to the communities they live in.

Plaintiffs articulated that common concern in their depositions. For example, Sandra Covington, the lead plaintiff in this action, explained her opposition to the redistricting plan on the basis that “it unfairly reasons that black people will only vote for a black candidate, and white people the same; and that is -- to me, that’s an unfair judgment about a racial group.” Sandra Covington Dep. p. 22 (attached hereto as Exhibit D). Plaintiff Milo Pyne, a Durham ecologist, explained,

Well, I believe that all the people of the state of North Carolina are harmed when we’re provided with unconstitutional districts and I believe these districts are unconstitutional because they pack African-American voters -- they unnecessarily pack African-American voters in certain districts as opposed to others and that deprives the African-American community of its political influence in these other districts in which they are not the majority.

Milo Pyne Dep. pp. 23-24 (attached hereto as Exhibit E). Plaintiff Antoinette Mingo described the stigma of the maps as follows: “What I do know is that I don’t like the idea of lines, so to speak, being drawn that engineers a movement of a lot of black people in one district. It just doesn’t sit well with me, and I don’t like being discriminated against, and it is discrimination.” Antoinette Mingo Dep. pp. 26-27 (attached hereto as Exhibit F). Even if they cannot precisely articulate the intricacies of the Voting Rights Act and federal constitutional law, Plaintiffs understand well the harm wrought upon them and others by the state’s racial gerrymandering scheme.¹

¹ Each Plaintiff was provided a copy of the complaint in this case, though some of them do not recall that fact. The reasons for their lapse of memory are understandable. Every

Extensive discovery has been conducted in this case since December 2015. The discovery period has already once been extended to allow depositions to be conducted until February 19, 2016. To date, more than 40 depositions have been conducted in this case, including the depositions of all 31 plaintiffs.² Trial is scheduled to commence on April 11, 2016.

In their far-reaching fishing expedition involving the deposition of all Plaintiffs and two *Dickson* plaintiffs, Defendants have not yet established any evidence of privity between Plaintiffs in this case and the plaintiffs in *Dickson*. By and large, Plaintiffs do not even know any of the plaintiffs in the other pending suits. To the limited extent that any Plaintiff does know another plaintiff, Plaintiffs testified under oath that they did not consult, collaborate, or even discuss the redistricting plans or litigation. *See, e.g.*, Juanita Rogers Dep. pp. 36-40 (Ex. C); Mark Englander Dep. pp. 29-31 (Ex. B); Viola Figueroa Dep. pp. 49-52 (attached hereto as Exhibit G); Bryan Perlmutter Dep. pp. 31-37 (attached

citizen faces daily demands on their time and attention. For example, Ms. Johnson testified that at the time the complaint was filed, she had recently lost her father, was on the verge of finishing clinicals for her degree, and her son was diagnosed with leukemia. Crystal Johnson Dep. pp. 28, 34 (Ex. A). Ms. Mingo testified that she does not recall the initial paperwork she received because it was “a minor thing” to her and because she is 70 years old. Antoinette Mingo Dep. p. 20 (Ex. F). In addition, most Plaintiffs in this case have never been involved in a lawsuit before, and none are attorneys. Thus, their experience with litigation, let alone lengthy pleadings, is limited.

² Defendants stated that they have agreed to take two Plaintiffs’ depositions out of time “as an accommodation to Plaintiffs.” Defs’ Mem. in Supp. of Mot. for Leave to Modify Sched. Order (D.E. 68) at 4, n. 3. One of those Plaintiffs could not be deposed because she fell in the lobby of Defendants’ counsel’s office building on her way to the deposition and had to be transported by ambulance to the hospital. She has now been deposed. The other Plaintiff could not make it to her first-scheduled deposition because winter weather created childcare issues for her, but she has since been deposed.

hereto as Exhibit H). Defendants are no closer to establishing the kind of privity that would give rise to claim or issue preclusion than they were in November 2015.

Furthermore, contrary to Defendants' portrayals, Plaintiffs are an exceptional group of civically-engaged residents of this state, who recognize the harms wrought upon them and others by Defendants' unconstitutional redistricting scheme. *See, e.g.*, Crystal Johnson Dep. pp. 28-29 (Ex. A) (involved in the Coalition Against Racism in Pitt County); Milo Pyne Dep. pp. 8-9 (Ex. E) (involved in the People's Alliance political action committee in Durham); Claude Dorsey Harris Dep. pp. 31-32 (attached hereto as Exhibit I) (founded member-at-large chapter of the League of Women Voters in 2014 for northeastern counties "to empower people with better knowledge of politics"). They are no puppets. They understand what has been done to them, and are determined to fight it. *See* Antoinette Mingo Dep. p. 15 (Ex. F) ("Let me say this: I am known for fighting for what is right. So a lot of people know me. And I will fight an issue to the last iota.").

Even though each Plaintiff has legal standing to pursue the vindication of his or her constitutional rights with respect to the particular district in which he or she resides, no Plaintiff, individually or collectively, has the financial resources to challenge the State with its vast resources represented both by the Attorney General and a large private law firm with offices around the world.³ *See* Juanita Rogers Dep. p. 17 (Ex. C) ("Q: If no one

³News reports indicate that the state has already paid the private firm defending it millions for their services. Gary Robertson, *NC lawmakers' distrust of AG means big legal bills*, Associated Press (Sept. 27, 2014), <http://legacy.wcnc.com/story/news/politics/2014/09/27/nc-lawmakers-distrust-of-ag-means-big-legal-bills/16330869/>; *Republicans*

had asked you, do you think you would have taken it upon yourself to sue the State of North Carolina? A: Probably eventually.”); *but cf. id.* at 41 (describing her inability to pay legal fees for this case).

Plaintiffs in this action are represented by the Southern Coalition for Social Justice (“SCSJ”), a 501(c)(3) organization based in Durham, NC, and Poyner Spruill, LLP, a law firm based in Raleigh, NC. Lawyers at SCSJ and Poyner Spruill agreed to take on the cause so eloquently described by Plaintiffs at no cost to Plaintiffs. Compensation for the attorneys’ services is dependent on the generosity of citizens and entities concerned about the race-based decision making by their elected representatives in the General Assembly. There is no single funder of this lawsuit. Indeed, as a non-profit legal services organization, SCSJ performs almost all of its work on a pro bono basis in every case. In order to comply with its obligation as a 501(c)(3) organization, SCSJ does not engage in partisan political activities.

Defendants seek to continue an irrelevant line of questioning after the close of discovery and as against two non-parties to this case. For the reasons that follow, Defendants’ motion should be denied.

at General Assembly set aside \$8M for litigation, Associated Press (Nov. 24, 2015), <http://www.jdnews.com/article/20151124/news/151129524>.

ARGUMENT

I. DEFENDANTS' THEORY OF PRIVACY IS LEGALLY UNSUPPORTED AND DOES NOT WARRANT EXPANDING THE DISCOVERY PERIOD

In seeking to expand the discovery period, Defendants explicitly rely on the legal arguments they articulated in seeking to depose Plaintiffs' counsel. Defs' Mem. in Supp. of Mot. for Leave to Modify Sched. Order (D.E. 68) at 5. Defendants described their theory of privacy as follows: "(1) that a non-party entity assumed sufficient control over the Dickson litigation such that they are bound by its judgment and (2) that the same entity is now attempting to relitigate the same issues using nominal plaintiffs as its proxies." Defs' Reply Mem. in Supp. of Mot. for Leave to Depose Counsel for Pls. (D.E. 64) at 5. This attenuated theory of privacy,⁴ whereby Defendants seek to preclude Plaintiffs from seeking relief in this court because of some alleged third-party control over both the prior action and the instant action, is a scenario in which no court has ever found a privacy relationship and is simply not supported by the facts. This Court has already denied the motion to depose Plaintiffs' counsel that was based on that same legal argument. There is no third party controlling this case or any other redistricting case. As such, extending discovery to pursue this fanciful theory is not warranted.

⁴ As stated in their Reply, this theory assumes that a non-party entity controlled not only the individual plaintiffs in Dickson, but also the organizational plaintiffs in the consolidated state court case *NAACP v. NC*, and the individual plaintiffs in Harris. Thus, as articulated by Defendants, this theory requires proof that the NAACP, League of Women Voters of North Carolina, the A. Philip Randolph Institute and Democracy North Carolina, all non-profit, non-partisan organizations, are in fact simply the puppets of some other non-party entity, a theory for which there is no factual basis whatsoever in any evidence produced in any of the cases. See Defs' Reply Mem. in Supp. of Mot. for Leave to Depose Counsel for Pls. (D.E. 64) at 5.

Specifically, Defendants' theories of *res judicata* and privity are inconsistent with state law standards on these issues. *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985) (holding that a federal court must look first to state preclusion law in determining the preclusive effects of a state court judgment). Under state law, *res judicata* and collateral estoppel only apply if the prior action involved the same parties or those in privity with the parties and the same issues. *King v. Grindstaff*, 284 N.C. 348, 356, 200 S.E. 2d 799, 805 (1973). In the context of collateral estoppel and *res judicata*, the term privity indicates a mutual or successive relationship to the same property rights. *Moore v. Young*, 260 N.C. 654, 133 S.E.2d 510 (1963). In the instant situation, the parties in the two prior state court cases (*Dickson v. Rucho* and *NC NAACP v. North Carolina*) and the prior federal case (*Harris v. McCrory*) are not the same parties as Plaintiffs in this case. There also is no evidence of privity as understood under North Carolina law in this case.

However, under state law, there is an exception to the general rule requiring shared identity or privity of parties, known as the *Lassiter* exception:

[A] person who is not a party but who controls an action, individually or in cooperation with others, is bound by the adjudications of litigated matters as if he were a party **if** he has a proprietary interest or financial interest in the judgment or in the determination of a question of fact or a question of law with reference to the same subject matter, or transactions; if the other party has notice of his participation, the other party is equally bound.

Thompson v. Lassiter, 246 N.C. 34, 39, 97 S.E.2d 492, 496 (1957) (emphasis added); *see also Workman v. Rutherford Elec. Membership Corp.*, 170 N.C. App. 481, 491-92 (2005); *Smoky Mountain Enterprises, Inc. v. Rose*, 283 N.C. 373, 196 S.E.2d 189 (1973);

Williams v. Peabody, 217 N.C. App. 1, 719 S.E.2d 88 (2011). In such a case, the one who was not a party to the prior action is bound by the previously-litigated matters as if he had been a party to that action. *Lassiter*, 246 N.C. at 39, 97 S.E. 2d at 496.

In determining whether the exception to privity exists, courts employ a three part test: (1) does a non-party to the original action, against whom *res judicata* is being asserted, exercise “control” of the original lawsuit and the present lawsuit; (2) does the non-party to the original action have “a proprietary interest or financial interest in the judgment;” and (3) does the non-party to the original action have an interest “in the determination of a question of fact or a question of law with reference to the same subject matter, or transactions?” *Id.* at 39, 97 S.E.2d at 496; *see also Peabody*, 217 N.C. App. at 10; 719 S.E.2d at 95. All three elements must be satisfied in order to establish the applicability of the *Lassiter* exception and therefore bar a second suit. *Peabody*, 217 N.C. App. at 14, 719 S.E.2d at 97-98.

Here, Defendants cannot satisfy the elements of this test, and deposing non-parties will not help them.

A. Defendants cannot show a single person or entity controls this case and any other redistricting case.

Neither Mr. Falmlen nor Democracy Partners exercises control of either lawsuit. North Carolina law sets a high standard for what constitutes “control.” The North Carolina Supreme Court decision in *Carolina Power & Light Co. v. Merrimack Mut. Fire Ins. Co.*, 238 N.C. 679, 79 S.E.2d 167 (1953), is instructive on this question. There, the court held that 20 property-damage claimants were not bound by a judgment against a

single claimant even where they agreed to allow the case of another claimant to proceed first and where all 21 claimants were represented by the same counsel. *Id.* at 686. Even though the claimants’ insurance companies agreed to try the single test case first, there was no evidence that “these other claimants or any of them, either directly or through their respective insurance companies, participated in the trial of the Fleming case, or that they ‘openly and actively,’ and with respect to some interest of their own, ‘assumed and managed’ the prosecution of the Fleming case.” *Id.* at 693. Thus, the court concluded that the later claimants could not have been said to have controlled the earlier litigation to which they were not parties. *Id.* at 688.

It is also important to understand that in the instant case, to satisfy the *Lassiter* exception, Defendants would have to prove that the alleged “puppeteer” controls not only this litigation, but also both state court actions. In the years of litigation in state court, there was never any suggestion or any facts tending to show that some non-party controlled the litigation. It is simply too late in the process for Defendants to be searching for information relevant to legally unsupported theories of privity or exceptions to privity.

More importantly, the *Lassiter* exception has never been extended to the position Defendants apparently are taking here: that a non-party to this case can bind these Plaintiffs to a prior decision. The parties in the instant case are not parties in the *Dickson*, *NC NAACP*, or *Harris* cases—that much even Defendants admit. Defs’ Mem. in Supp. of Mot. for Leave to Depose Counsel (D.E. 59) at 4. Defendants do not even seem to

argue that Plaintiffs here are in direct privity with the plaintiffs in the two state court cases. Defs' Mem. in Supp. of Mot. for Leave to Modify Sched. Order (D.E. 68). Rather, they allege some intermediary controlled all three cases. That is, the parties against whom *res judicata* and collateral estoppel are being asserted in this case are not the parties who Defendants allege had control over the state court and instant litigation. Defendants' theory of privity is attenuated, and there is no case in North Carolina where a court has estopped a plaintiff from seeking relief because it found that a "puppeteer" of sorts was either controlling or financially supporting the estopped litigation and previous litigation. Given the tenuousness of this legal theory, no facts adduced from additional needless depositions would help Defendants.

The facts do not support Defendants' imagined hypothesis. From their various papers it seems that Defendants are imagining that the North Carolina Democratic Party ("NCDP") is the "force" controlling this lawsuit and the two state court lawsuits. It is true that Mr. Wilson is employed by the NCDP and that he was asked by Scott Falmlen, a political consultant, to help identify citizens who might want to become plaintiffs in this lawsuit. Mr. Wilson has only been employed with the NCDP since April 2012. Doug Wilson Dep. pp. 12-13 (attached hereto as Exhibit J). Mr. Wilson identified and contacted only seven of the 31 Plaintiffs. *Id.* at 23, 29, 45, 48-49, 55, 57. Importantly, Mr. Wilson testified that he did not know and had never talked to 24 out of the 31 plaintiffs in this suit, Doug Wilson Dep. pp. 38-39, 44-59 (Ex. J), thus refuting the theory that the NCDP is the "force" controlling this lawsuit. Mr. Wilson testified that he was the

only employee or representative of the NCDP to make any of the calls seeking to identify those who might want to be plaintiffs. Doug Wilson Dep. p. 49 (Ex. J). Additionally, although it is unclear how this would relate to Defendants' puppeteer theory, Defendants acknowledge Margaret Dickson spoke with only one Plaintiff, David Mann, about this case. Defs' Mem. in Supp. of Mot. to Modify Sched. Order (D.E. 68) at 2.

Moreover, characterizing Mr. Wilson's efforts relating to a small number of Plaintiffs as "recruiting" plaintiffs is not helpful to this analysis. The U.S. Supreme Court has long recognized the principle that "collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment." *United Transp. Union v. Michigan Bar*, 401 U.S. 576, 585 (1971). There is no case in North Carolina suggesting that engaging in that protected "collective activity" constitutes "control" over the litigation for purposes of the *Lassiter* exception. Mr. Wilson exercised his First Amendment rights to identify citizens who had been previously involved in political activities and ask if they would have an interest in becoming plaintiffs in a lawsuit challenging the race-based redistricting maps drawn by their elected representatives in the General Assembly.

Even if Mr. Wilson's and Ms. Dickson's testimony had not refuted the factual basis for defense counsel's imagined grounds for extending discovery, they have yet to explain how additional testimony might be relevant. In the course of months of discovery and over 40 depositions, there has been zero evidence adduced that any of the Plaintiffs in this case share identity or privity with the plaintiffs in either the *Dickson* case

or the *NAACP* case—in fact, all evidence adduced in Plaintiffs’ depositions indicates the contrary. In over 40 depositions, no facts have come to light that would tend to show that the three preconditions necessary for the *Lassiter* exception apply in this case.⁵ Even assuming, *arguendo*, that some donors who financially supported the other pending cases may have also made donations to support the *Covington* litigation, that fact, would not establish control over either case. Just as in *Troy Lumber Co. v. Hunt*, 251 N.C. 624, 112 S.E.2d 132 (1960), where a shareholder in a corporation could not be said to exert control over a case where the company in which he held shares was a party, neither can remote, and potentially numerous, donors be said to control either the instant litigation or the previous litigation.⁶ Unlike in *Cline v. McCullen*, 148 N.C. App. 147; 557 S.E.2d 588

⁵ Interestingly, in the *Harris v. McCrory* case, where a three-judge panel repeatedly rejected the same res judicata and collateral estoppel arguments, Defendants theorized that the NC NAACP was the “puppeteer” behind the federal litigation challenging two North Carolina congressional districts. They even took a 30(b)(6) deposition of the NC NAACP in the *Harris* case. *Harris v. McCrory*, 1:13-cv-949 (M.D.N.C.), Defs’ Mem. of Law in Supp. of Defs’ Mot. for Summ. J. (D.E. 47) at 6. Nothing that emerged in that deposition supported Defendants’ theory, and thus the court in *Harris* rejected Defendants’ preclusion arguments. *Harris v. McCrory*, 1:13-cv-949 (M.D.N.C.), Order (D.E. 84).

⁶ Additionally, as explained before in briefing on the denied motion to depose Plaintiffs’ counsel, Defendants’ theory of privity and control assumes that Plaintiffs’ counsel would allow non-clients to control the litigation, which would be a violation of the North Carolina Rules of Professional Conduct. Plaintiffs vehemently reject such implications, and absolutely zero evidence has been adduced that would support Defendants’ defamatory insinuations. Moreover, the fact that Plaintiffs’ oppose Defendants’ frivolous lines of inquiry does not imply that those inquiries have any merit, as suggested in Defendants’ Reply in Support of their Motion to Depose Counsel. (D.E. 64) at 7. Rather, Plaintiffs have a real interest in ensuring that this case proceeds to trial as scheduled. Plaintiffs also have a substantial interest in ensuring that Defendants do not discourage

(N.C. App. 2001), described below, there has been no suggestion that Plaintiffs were actively involved in strategizing the earlier *Dickson* litigation. In fact, many Plaintiffs were not even aware that there had been other litigation relating to North Carolina's 2011 redistricting plans. *See, e.g.*, Mark Englander Dep. p. 36 (Ex. B); Marshall Ansin Dep. p. 29 (attached hereto as Exhibit K). There is no evidence that any attended the *Dickson/NC NAACP* or *Harris* trials.

B. Defendants cannot show the requisite proprietary interest in all of the cases.

Second, Defendants cannot show any non-party against whom preclusion is being sought has a proprietary interest in both cases. In *Cline*, the Court of Appeals found that a second action was barred because the plaintiff in *Cline* had a “substantial interest” in the prior case—a fifty-percent interest in the prior plaintiff’s bail bond commissions, a financial stake that constituted a proprietary interest in the judgment. *Cline*, 148 N.C. App. at 151, 557 S.E.2d at 591. In addition, the plaintiff “was aware of Tindall’s earlier lawsuit because he had attended a law office meeting with Tindall and defendant’s counsel to discuss Tindall’s case. The court further found that plaintiff was ‘actively involved in the discussions that took place in that meeting.’” *Id.* at 150-51, 557 S.E.2d at 591. There is no similar evidence in this case, and Defendants will not find any such evidence by deposing Mr. Falmlen or Democracy Partners. There has not even been any allegation that any of the Plaintiffs has “a proprietary interest or financial interest in the

public interest litigation by needlessly deposing non-parties, thus ratcheting up the costs of litigation seeking to vindicate constitutional rights.

[original] judgment.” This is a necessary element, and in none of the four pending cases are plaintiffs seeking monetary damages.

Defendants are no closer to being able to establish privity, or an applicable exception thereto, than they were in November 2015. There is no basis for extending discovery in this case.

II. DEFENDANTS HAVE NOT SHOWN GOOD CAUSE FOR MODIFYING THE SCHEDULING ORDER

Defendants have offered no good cause for modifying the scheduling order to extend discovery at this late date. “A schedule may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). “A scheduling order represents the critical path chosen by the Court and the parties to fulfill the mandate of Federal Rule of Civil Procedure 1 in securing the just, speedy, and inexpensive determination of every action.” *Alston v. Becton, Dickson & Co.*, No. 1:12-cv- 452, 2014 U.S. Dist. LEXIS 11370, 2014 WL 338804 (M.D.N.C. Jan. 30, 2014) (citing *Marcum v. Zimmer*, 163 F.R.D. 250, 253 (S.D. W. Va. 1995)) (internal brackets and quotation marks omitted); *see also Blue v. Hartford Life & Accident Ins. Co.*, 698 F.3d 587, 594 (7th Cir.) (reaffirming “that district courts have an interest in keeping litigation moving forward and that maintaining respect for set deadlines is essential to achieving that goal”); *Walter Kidde Portable Equip., Inc. v. Universal Sec. Instruments, Inc.*, No. 1:03-cv-537, 2005 U.S. Dist. LEXIS 46201, 2005 WL 6043267, at *3 (M.D.N.C. July 7, 2005) (citing this Court’s “history of strict adherence to discovery schedules”).

In *Chalmers v. Petty*, 136 F.R.D. 399, 407 (M.D.N.C. 1991), this Court found that the plaintiff's motion to re-open discovery stemmed from an improper purpose warranting *sua sponte* sanctions where only "baseless allegations" supported the plaintiff's request for further discovery. As described above, Defendants' theory in seeking to take these additional depositions is baseless. Moreover, continuing to take depositions in this critical time of trial preparation for Plaintiffs diverts important time and resources from Plaintiffs' counsel's efforts and is prejudicial to Plaintiffs' interests.

Additionally, a party cannot seek additional testimony, even if relevant, outside of the discovery period simply because deponents in depositions already conducted did not provide information to support that party's legal theory. In *Akeva L.L.C. v. Mizuno Corp.*, 212 F.R.D. 306, 310 (M.D.N.C. 2002), the Court held that the desire to bolster an expert opinion with a second expert after initial testimony failed to yield what the party hoped did not constitute good cause for an out-of-time disclosure. Similarly, here, just because Defendants did not find what they were hoping for in the dozens of depositions they already conducted does not mean that they may keep conducting depositions *ad infinitum* until they find some tidbit they need to support their conspiracy theory. Rule 16 does not allow Defendants to do so.

CONCLUSION

For the foregoing reasons, Plaintiffs request that this Court deny Defendants' Motion to Modify the Scheduling Order.

This the 2nd day of March, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on this date I have electronically filed the foregoing PLAINTIFFS' BRIEF IN OPPOSITION TO MOTION TO MODIFY THE SCHEDULING ORDER with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

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This the 2nd day of March, 2016.

s/ Edwin M. Speas, Jr.

Edwin M. Speas, Jr.

INDEX TO EXHIBITS TO
PLAINTIFFS' BRIEF IN OPPOSITION TO
MOTION TO MODIFY THE SCHEDULING ORDER

- Exhibit A Excerpts from the Deposition of Crystal Johnson, taken February 16, 2016;
- Exhibit B Excerpts from the Deposition of Mark Englander, taken February 5, 2016;
- Exhibit C Excerpts from the Deposition of Juanita Rogers, taken February 11, 2016;
- Exhibit D Excerpt from the Deposition of Sandra Little Covington, taken February 11, 2016;
- Exhibit E Excerpts from the Deposition of Milo Pyne, taken February 12, 2016;
- Exhibit F Excerpts from the Deposition of Antoinette Mingo, taken February 5, 2016;
- Exhibit G Excerpt from the Deposition of Viola Figueroa, taken February 5, 2016;
- Exhibit H Excerpt from the Deposition of Bryan Perlmutter, taken February 11, 2016;
- Exhibit I Excerpt from the Deposition of Claude Dorsey Harris, taken February 12, 2016;
- Exhibit J Excerpts from the Deposition of Douglas Wilson, taken February 19, 2016;
and
- Exhibit K Excerpt from the Deposition of Marshall Ansin, taken February 4, 2016.

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

SANDRA LITTLE COVINGTON, et al.,)

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Plaintiffs,)

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vs.)

)

THE STATE OF NORTH CAROLINA, et)

al.,)

)

Defendants.)

)

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DEPOSITION OF CRYSTAL JOHNSON

(Taken by Defendants)

FEBRUARY 16, 2016

Reported by: Faith Pitino, Court Reporter

Notary Public



1 A. As far as the redistricting, and that was it. I
2 just can't -- like I said, I really can't remember it all.
3 I really can't remember any of it, to be honest with you.
4 It's just --

5 Q. All right. But you said that you discovered an
6 issue with redistricting that needed to be resolved.

7 A. And that was --

8 MS. MACKIE: Objection. She just testified that
9 she can't remember anything more than that. I mean, I'll
10 let her answer this question, but then I think we should
11 move on.

12 BY MR. MCKNIGHT:

13 Q. But you can't remember what specifically that
14 issue was; is that right?

15 A. And I'll say it again, being a mother of, now four
16 in my home, I have to answer questions daily about fourth
17 grade math, that I don't remember doing in the fourth grade,
18 so please -- and I'm pregnant, again, so there's a lot -- I
19 could tell you -- I have a -- my 17-year-old gets chemo
20 every week, so I'm really dealing with a lot. I don't
21 remember everything I do from day to day.

22 Q. And I completely understand that. I'm just trying
23 to make sure that I understand, today, everything that you
24 may know about the lawsuit, so that's why I'm asking. So if
25 you can't remember anything that I ask, that's fine. I'm

1 not -- it's not a memory test or anything like that.

2 A. I'm sure when I leave, my husband's going to ask
3 me what questions did they ask, and I'm going to say, "I
4 don't remember."

5 Q. Okay. I understand that you're involved with the
6 group called "The Coalition Against Racism" in Pitt County;
7 is that right?

8 A. Yes.

9 Q. And what does that group do?

10 A. Pretty much, they fight for people who are being
11 targeted with racial issues on the job, at schools. We
12 rally for -- we rally for unjust firing at -- you know,
13 depending on what the situation is. We -- they help out
14 with children who are being targeted in schools, that may
15 have disabilities. Things like that.

16 Q. And is that group associated with the NAACP?

17 A. I do believe so.

18 Q. Okay. What was that?

19 A. I do believe so.

20 Q. Okay. And how? In what way?

21 A. When we have meetings, there will be members of
22 the NAACP who attend the meetings.

23 Q. And how long have you been involved with that
24 group?

25 A. Four years. A little over four years.

1 Q. All right. Ms. Johnson, I don't think I have any
2 further questions for you, at this time.

3 MS. MACKIE: I have just one or two questions.

4 EXAMINATION

5 BY MS. MACKIE:

6 Q. I believe you testified that you had a lot going
7 on in -- over the past year; is that correct?

8 A. Yes.

9 Q. Okay. If this lawsuit was filed back in May of
10 2015, can you just tell me what was going on in your life,
11 around that time?

12 A. Okay. Well, just before May, I lost my dad in
13 March. We buried him in April. May -- I was the verge of
14 finishing up my clinicals, for my medical assistant degree.
15 May 4th, my son -- my older son, was diagnosed with
16 leukemia, acute lymphoblastic leukemia, which his symptoms
17 started around April. I was fighting the hospital to run a
18 CBC for him, since April, and they wouldn't do it until
19 May 4, and finally it was determined that he had leukemia.
20 He was in the hospital for almost a month, going through
21 tests and chemo, and I was almost with him every day. It
22 was so devastating. I was trying to hold onto everything
23 and finish my clinicals, graduate, which I did, and just
24 trying to keep my son's faith up, trying to keep my faith
25 up. So that's -- and that's what we've been dealing with

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

SANDRA LITTLE COVINGTON,)
et al.,)
)
 Plaintiffs,)
)
 vs.)
)
)
THE STATE OF NORTH CAROLINA,)
et al.,)
)
 Defendants.)

)

DEPOSITION OF MARK ENGLANDER

(Taken by Defendants)

Charlotte, North Carolina

Friday, February 5, 2016



1 Q. And could you provide your full name for
2 the record?

3 A. Mark Robert Englander.

4 Q. Have you ever gone by any other names?

5 A. No.

6 Q. What is your date of birth?

7 A. 10/28/52.

8 Q. Are you married?

9 A. No.

10 Q. Does anyone else live in your household?

11 A. Yes.

12 Q. Who is that?

13 A. Elaine Cahn.

14 Q. How do you spell that last name?

15 A. C-a-h-n.

16 Q. And what is Ms. Cahn's relationship to you?

17 A. Partner.

18 Q. And what do you do for a living,

19 Mr. Englander?

20 A. I own a store, retail store.

21 Q. Are you in the energy business?

22 A. I'm now in kind of like the bike business,
23 electric bike business. It's always morphing.

24 Q. How about Ms. Cahn? What does she do?

25 A. Retired.

1 A. The NAACP and the League of Women Voters.

2 Q. How are you familiar with them?

3 A. The news and League of Women Voters used to
4 be the ones holding debates. Not anymore. I guess
5 that's how I --

6 Q. You mean candidate debates?

7 A. Yes.

8 Q. Was that here locally?

9 A. Uh-huh.

10 Q. Are you on a mailing list for any of those
11 groups?

12 A. No.

13 Q. You said you got a lot of e-mails. You
14 don't get any e-mails from any of those groups?

15 A. No, I don't.

16 MR. MCKNIGHT: I want to hand you another
17 document that I'm going to mark as Exhibit 4.

18 (EXHIBIT NO. 4 MARKED FOR IDENTIFICATION.)

19 BY MR. MCKNIGHT:

20 Q. I want you to take a look at those names at
21 the top. This Exhibit 4, Mr. Englander, is a cover
22 page of a complaint for a lawsuit that's known as
23 Dickson versus Rucho. And at the top of that page
24 there is a list of plaintiffs in that lawsuit.

25 A. Yes.

1 Q. Could you look at that list of names that
2 is listed there and let me know if you know or are
3 familiar with any of those people who are listed.

4 A. I'm familiar with one name.

5 Q. Which one is that?

6 A. Vilma Leak.

7 Q. How are you familiar with Ms. Leak?

8 A. She's an elected official in this county.

9 Q. Is she a commissioner?

10 A. Yes.

11 Q. Are there any other names that you are
12 familiar with?

13 A. No.

14 MR. MCKNIGHT: I'm going to hand you
15 another document now that I'm going to mark as
16 Englander Exhibit 5.

17 (EXHIBIT NO. 5 MARKED FOR IDENTIFICATION.)

18 BY MR. MCKNIGHT:

19 Q. And this is a document from a companion
20 case, the Dickson case. It's called North Carolina
21 State Conference of the NAACP versus the State of
22 North Carolina, and there are some plaintiffs listed
23 in the top left-hand corner of the page there.

24 Will you look at that list of plaintiffs
25 and let me know if you're familiar with any of those

1 organizations or individuals.

2 A. No one.

3 Q. All right. Now, with respect to Ms. Leak,
4 who we spoke about a moment ago, have you had any
5 conversations with Ms. Leak at any time?

6 A. No.

7 Q. So if you will please, sir, I want you to
8 turn back to Exhibit 3, and I have a couple more
9 questions for that -- for you on that exhibit.

10 My next question comes from page 17, which
11 is interrogatory six, and it asked you to describe
12 your responsibility, if any, for the payment of any
13 attorneys' fees or costs incurred by your counsel or
14 any attorneys' fees or costs that might be awarded
15 against you in this lawsuit.

16 It goes on to say that if you are not
17 responsible for such fees or costs, to identify the
18 persons or entities who are responsible by stating
19 their name and address and describe your relationship
20 with them.

21 Mr. Englander, what is your understanding
22 about who is responsible for the payment of any
23 attorneys' fees and costs in this case?

24 A. I have not a clue.

25 Q. And when you were asked to be a plaintiff

1 costs in this lawsuit?

2 A. No.

3 Q. And do you have an engagement letter with
4 your counsel in this lawsuit?

5 A. What's an engagement letter?

6 Q. Did you ever get a letter from your
7 attorneys, stating the terms under which they would
8 represent you in this lawsuit?

9 A. Not that I recall.

10 Q. And you didn't receive anything like that
11 from any attorney?

12 A. Not that I recall.

13 Q. Were you ever aware that there had been
14 other lawsuits about redistricting and specifically
15 about legislative districts in North Carolina in this
16 latest round of redistricting?

17 A. No.

18 Q. You had never heard about any other
19 lawsuit?

20 A. No.

21 Q. I think you said that this issue came to
22 your attention in 2011 or 2012 time frame after the
23 latest round of redistricting occurred.

24 Did you not seek anybody out or make any
25 attempt to make a legal challenge to the districts

SANDRA LITTLE COVINGTON,
et al.,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA,
et al.,

Defendants.

THURSDAY, FEBRUARY 11, 2016

By: Sophie Brock, RPR, CRR



1 A. Okay.

2 Q. -- but I appreciate it.

3 And do you know Mr. Baskerville personally?

4 A. Well, I would say that Nathan attended the
5 school where I used to work at when he was young.

6 Q. Okay. Which school was that?

7 A. Eaton-Johnson Middle School, in Henderson,
8 North Carolina.

9 Q. Okay. What did you do at Eaton-Johnson?

10 A. I was a librarian.

11 Q. So when he was a student in middle school?

12 A. Uh-huh.

13 Q. That's fun. How long did you work at the
14 school?

15 A. I worked there 13 years before retirement.

16 Q. Okay. Well, interesting.

17 So moving on to the State Senate
18 District 20, do you know who represents that district?

19 A. Floyd McKissick.

20 Q. And how long do you think -- do you know how
21 long he has represented that district?

22 A. All I can say, a very long time.

23 Q. Fair enough.

24 A. I can't recall the number of years.

25 Q. And do you know Mr. McKissick personally?

1 contact with Ms. Earls?

2 A. I got in contact with Ms. Earls.

3 Q. Okay. If Theo hadn't called you, do you
4 think you would have participated in this lawsuit in
5 any way?

6 A. If I had been asked, yeah.

7 Q. Okay. If no one had asked you, do you think
8 you would have taken it upon yourself to sue the State
9 of North Carolina?

10 A. Probably eventually.

11 Q. Okay. Did Theo -- I think you mentioned a
12 little bit what Theo told you about the lawsuit. Did
13 he explain to you what the lawsuit was kind of seeking
14 to accomplish?

15 A. No, he didn't.

16 Q. So he didn't talk about the -- what the
17 plaintiffs wanted or what the end result was going to
18 be?

19 A. No.

20 Q. Okay. Did you talk to anyone -- before you
21 spoke with Ms. Earls, did you talk with anyone other
22 than Theo and the two attorneys down in Oxford?

23 A. No.

24 Q. Okay.

25 A. Because, actually, I -- you know, I didn't

1 Q. Philip A. Baddour?

2 A. No.

3 Q. Douglas A. Wilson?

4 A. No.

5 Q. Okay. I apologize. I know that was painful.

6 One more. Sorry.

7 (Exhibit No. 5 was marked for identification.)

8 Q. Ms. Rogers, do you recognize this document?

9 A. No. I have not had this document.

10 Q. I'll represent to you that this is the first
11 page of a Complaint filed titled "North Carolina State
12 Conference of Branches of the NAACP v. State of
13 North Carolina." It's another redistricting lawsuit
14 that was filed a couple of years ago.

15 I'm just going to go through and see if you
16 know or have had conversations with any of the
17 following people; all right?

18 A. Okay.

19 Q. Reva McNair?

20 A. No.

21 Q. Matthew Davis?

22 A. No.

23 Q. Tressie Stanton?

24 A. No.

25 Q. Anne Wilson?

- 1 A. No.
- 2 Q. Sharon Hightower?
- 3 A. No.
- 4 Q. Kay Brandon?
- 5 A. No.
- 6 Q. Goldie Wells?
- 7 A. No.
- 8 Q. Gray Newman?
- 9 A. No.
- 10 Q. Yvonne Stafford?
- 11 A. No.
- 12 Q. Robert Dawkins?
- 13 A. No.
- 14 Q. Sara Stohler?
- 15 A. No.
- 16 Q. Hugh Stohler?
- 17 A. No.
- 18 Q. Octavia Rainey?
- 19 A. No.
- 20 Q. Charles Hodge?
- 21 A. No.
- 22 Q. Marshall Hardy?
- 23 A. No.
- 24 Q. Martha Gardenhight?
- 25 A. No.

1 Q. Ben Taylor?
2 A. No.
3 Q. Keith Rivers?
4 A. No.
5 Q. Romallus O. Murphy?
6 A. No.
7 Q. Carl White?
8 A. No.
9 Q. Rosa Brodie?
10 A. No.
11 Q. Herman Lewis?
12 A. No.
13 Q. Clarence Albert?
14 A. No.
15 Q. Evester Bailey?
16 A. No.
17 Q. Albert Brown?
18 A. No.
19 Q. Benjamin Lanier?
20 A. No.
21 Q. Gilbert Vaughn?
22 A. No.
23 Q. Avie Lester?
24 A. No.
25 Q. Theodore Muchiteni?

- 1 A. No.
- 2 Q. William Hobbs?
- 3 A. No.
- 4 Q. Jimmy Ray Hawkins?
- 5 A. No.
- 6 Q. Horace P. Bullock?
- 7 A. No.
- 8 Q. Roberta Waddle?
- 9 A. No.
- 10 Q. Christina Davis-McCoy?
- 11 A. No.
- 12 Q. James Oliver Williams?
- 13 A. No.
- 14 Q. Margaret Speed?
- 15 A. No.
- 16 Q. Larry Laverne Brooks?
- 17 A. No.
- 18 Q. Carolyn S. Allen?
- 19 A. No.
- 20 Q. Walter Rogers, Sr.?
- 21 A. No.
- 22 Q. Sean Meachem?
- 23 A. No.
- 24 Q. Mary Green Bonaparte?
- 25 A. No.

1 Q. Samuel Love?

2 A. No.

3 Q. Courtney Patterson?

4 A. No.

5 Q. Willie O. Sinclair?

6 A. No.

7 Q. Cardes Henry Brown, Jr.?

8 A. No.

9 Q. Jane Stephens?

10 A. No.

11 Q. Okay.

12 Ms. Rogers, are you paying your attorneys to
13 take part in this lawsuit?

14 A. No, I'm not.

15 Q. Have you ever had any discussions about how
16 this lawsuit is being funded?

17 A. I did initially, and I think I was told
18 through the Southern Coalition.

19 MS. MACKIE: I'm going to stop you right
20 there. If you're going to be talking about
21 conversations that you had with Anita, those
22 conversations are privileged.

23 THE WITNESS: Okay.

24 Q. So any conversations with any non- --

25 A. No.

1 Q. -- Southern Coalition --

2 A. No.

3 Q. -- or Ms. Mackie?

4 A. No.

5 Q. Okay.

6 Do you know any of the other plaintiffs in
7 this case?

8 A. I certainly do not.

9 Q. Okay. So did it ever concern you that you
10 might have to pay some legal fees for this case?

11 A. Not really, because I don't have no money to
12 pay legal fees.

13 Q. Okay. Is there any written document
14 explaining how you're not responsible for legal fees?
15 Does that document exist?

16 A. Not that I know of.

17 Q. Okay.

18 A. I mean, I haven't seen anything, I don't
19 think.

20 Q. Okay.

21 Please turn to -- I think this is what we
22 were looking at at Rogers 3, Interrogatories.

23 A. Okay.

24 Q. Turn to page 37. No. 7 asks for you to
25 describe any involvement in the 2011 redistricting

SANDRA LITTLE COVINGTON,
et al.,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA,
et al.,

Defendant.

1:02 P.M.

THURSDAY, FEBRUARY 11, 2016

By: Sophie Brock, RPR, CRR



1 of the county that -- for instance, 43 has a cohesive
2 area and then it has fragments around it. And 44 is
3 the same: it branches out into District 42 and 43.

4 Q. Okay. But specifically District 42, since
5 that's the one you live in, that's the one I'm really
6 interested in knowing how you believe the way that
7 district is drawn harms you.

8 A. In District 42, which is our House district,
9 it branches out into an area that covers an area that
10 the person or persons running for office will not
11 reach all of his constituents or all the voters in
12 that area. It will be difficult.

13 Q. And why do you think it would be difficult,
14 the way this district is drawn, for the candidate to
15 reach all the voters in the area?

16 A. Because of the way it's formulated. Because
17 of the way the lines are drawn.

18 Q. Okay. Is there any other reason that you
19 think the way this district is drawn harms you?

20 A. I feel that it unfairly reasons that black
21 people will only vote for a black candidate, and --

22 Q. I'm sorry. Go ahead and finish. I am not
23 sure I understood what -- did you say --

24 A. I think it unfairly reasons that black people
25 will only vote for a black candidate, and white people

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

SANDRA LITTLE COVINGTON,)
et al,)
)
 Plaintiffs,)
)
vs.)
)
THE STATE OF NORTH)
CAROLINA, et al.,)
)
 Defendants.)
)

DEPOSITION OF MILO PYNE

9:08 A.M.

FRIDAY, FEBRUARY 12, 2016

OGLETREE DEAKINS NASH SMOAK & STEWART
4208 SIX FORKS ROAD
SUITE 1100
RALEIGH, NORTH CAROLINA

By: Cynthia S. Boyd, RPR



1 when you first learned about that?

2 A. I don't recall exactly.

3 Q. How about the one that you mentioned that
4 was in the paper yesterday? It's called Dickson
5 versus Rucho sometimes.

6 A. I think I wasn't -- it was hard to keep
7 track of how many there were. So I was aware of
8 the one involving Mr. Harris because I know
9 Mr. Harris. I was not aware of the other one until
10 here recently.

11 Q. All right. How do you know Mr. Harris?

12 A. We have served together on the
13 Coordinating Committee of the People's Alliance and
14 we have served together on the Executive Committee
15 of the Durham Democratic Party as well as the State
16 Executive Committee of the Democratic Party.

17 Q. And when you say "the People's Alliance,"
18 is that a group in Durham?

19 A. It is a community group in Durham that has
20 its own political action committee, and David
21 served as the president of the parent C4
22 organization.

23 Q. What sorts of advocacy or activities is
24 People's Alliance involved with?

25 A. They work on economic justice issues,

1 civil rights issues, environmental issues, that
2 sort of thing.

3 Q. Did you review any documents in
4 preparation for your deposition today?

5 A. No.

6 Q. And other than this lawsuit, have you ever
7 been involved in another lawsuit as a party either
8 as a plaintiff or defendant? And that could be
9 civil or criminal.

10 A. Not as I recall.

11 (Pyne Exhibit No. 1 was marked for
12 identification.)

13 BY MR. McKNIGHT:

14 Q. Mr. Pyne, I'm going to hand you an exhibit
15 that I'm going to mark as Pyne Exhibit 1. I'm also
16 going to hand a copy to your counsel. I want you
17 to take a minute to look at this document and let
18 me know if you're ready for some questions.

19 A. Yeah. Go ahead.

20 Q. All right. Mr. Pyne, do you recognize
21 this document?

22 A. It appears to be a printout from a website
23 of the North Carolina State Board of Elections and
24 it appears to be my voter information file.

25 Q. All right. And looking at the left-hand

1 large, it can be split and that's happened in parts
2 of Durham where lots of new apartment houses are
3 constructed and all of a sudden the precinct is
4 enormous and it's too large. It's all got to be in
5 one polling place and there has to be so many
6 square feet and parking places and so forth, and
7 all those factors might mitigate the precinct be
8 split. So we have one called like 30-1, 30-2, so
9 on and so forth. So they will be split simply when
10 they become too large but there's no requirement
11 for them to be equal population.

12 Q. Do you believe that you have been harmed
13 in the manner in which Senate District 20 or House
14 District 29 is currently drawn?

15 A. Well, I believe that all the people of the
16 state of North Carolina are harmed when we're
17 provided with unconstitutional districts and I
18 believe these districts are unconstitutional
19 because they pack African-American voters -- they
20 unnecessarily pack African-American voters in
21 certain districts as opposed to others and that
22 deprives the African-American community of its
23 political influence in these other districts in
24 which they are not the majority. So both these
25 districts have increased their proportion of

1 African-American voters between the pre 2010 and
2 post 2010 districts.

3 Q. So you don't believe African-American
4 voters are deprived of any influence in the two
5 districts that you live in, House District 29 and
6 Senate District 20?

7 A. They're not deprived -- well, let me
8 think. Not in that district. They're deprived of
9 influence in the adjacent districts. So the
10 districts are made more demographically uniform in
11 terms of race, which is egregious.

12 Q. You use the term "packing" and that's a
13 term that we see thrown about a lot in these
14 redistricting disputes. What does the term
15 "packing" mean to you?

16 A. Well, it means that the members of this
17 group, in this case African-Americans, and I'm sure
18 there's other ways that could work out, but it's
19 possible to do this because of the distribution of
20 people of different racial and ethnic groups into
21 neighborhoods and districts. So prior to 2010,
22 these districts had African-American
23 representatives but they were not majority black
24 districts. So that showed that people of all races
25 were willing to vote for these particular

SANDRA LITTLE COVINGTON,
et al.,

Plaintiffs,

vs.

THE STATE OF NORTH CAROLINA,
et al.,

Defendants.

Friday, February 5, 2016



1 Democratic Party?

2 A. Yes, I do.

3 Q. Tell me how that is.

4 A. Let me say this: I am known for fighting
5 for what is right. So a lot of people know me. And
6 I will fight at issue to the last iota.

7 And I've had the opportunity I think last
8 year -- he wasn't always an employee, if he's an
9 employee now, and I've called him for advice or
10 whatever in the past about precinct information, et
11 cetera.

12 Q. Now, what is your involvement in the
13 Democratic Party?

14 A. I am, first of all, a registered Democrat,
15 and I vote. Secondly, I am a member of the state
16 executive committee, which comprises three or 400
17 people and I'm also a precinct chair.

18 Q. And you're the chair of your precinct?

19 A. Absolutely.

20 Q. And when Mr. Wilson called you, what did he
21 say?

22 A. He just asked me if I would -- he said that
23 there was a suit that would be filed and would I want
24 to be a part of it, and I said "most certainly,"
25 about redistricting. He did say that.

1 responsible for the payment of any attorneys' fees?

2 A. No, I have not.

3 Q. And have you signed any sort of engagement
4 agreement with Mr. O'Hale or his law firm, to your
5 knowledge?

6 A. No. He sent me something, but I -- I think
7 I did sign something to say that I would be a part --
8 right. It was an agreement to be a part of the
9 lawsuit.

10 Q. Do you remember when you would have signed
11 that agreement?

12 A. No. It was an e-mail. Sent to me via
13 e-mail, and I don't remember.

14 Q. But you had to print it out and sign it and
15 return it?

16 A. I'm 70. I don't remember that either.
17 Maybe so. I really don't know. I don't remember.
18 It was just, to me, a minor thing.

19 Q. When Mr. Wilson talked to you about the
20 lawsuit, did he tell you what he thought the suit was
21 intended to accomplish?

22 A. No. No, he did not. My guess is he just
23 assumed that I would know, but he did not. Because
24 I'm involved, you know, so I don't think he gave it
25 another thought that I wouldn't know.

1 Q. Most African Americans, though, are
2 registered Democrats; are they not?

3 A. No. I can see Republicans, African
4 Americans and unaffiliates. So I know that most of
5 the people in my precinct are African American.

6 Q. How about House District 99? Do you
7 believe there are too many African American voters in
8 House District 99?

9 A. Yes, I do.

10 Q. Why is that?

11 A. For the same reason that I just mentioned
12 before. We're all -- right. Same reason. I can
13 see, and that's it.

14 Q. And do you know what the percentage of
15 African American voters in House District 99 is?

16 A. I do not know. Go ahead. But I have
17 looked at records. I don't know off the top of my
18 head, but I go and, as I said, I look at data.

19 Q. Well, do you have any idea of what you
20 would like the percentage of African Americans in
21 House District 99 to be?

22 A. Well, no, I can't say that. What I do know
23 is that I don't like the idea of lines, so to speak,
24 being drawn that engineers a movement of a lot of
25 black people in one district.

1 It just doesn't sit well with me, and I
2 don't like being discriminated against, and it is
3 discrimination.

4 Q. Why do you believe that that occurred?

5 A. Why do I believe it occurred?

6 Q. Yes.

7 A. That is something that your -- well, I
8 don't know why it occurred. My guess is so that
9 another party could win seats and that would deprive
10 African Americans of the opportunity for running for
11 offices in a wider area.

12 Q. So you think politics was behind the
13 district lines?

14 A. Certainly. Politics, which translates into
15 discrimination.

16 Q. How is that?

17 A. Because once again, once you bring a lot of
18 African Americans or any other ethnicity together in
19 one district, it means they can't run for office in
20 another district.

21 You know, when I say "one district," I mean
22 when you just put them all together. So you only
23 have an opportunity to win one seat. It dilutes your
24 ability to run and expect to win in another area.

25 Q. But in the districts you live in, Senate

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

No. 1:15-CV-00399

SANDRA LITTLE COVINGTON,)

et al.,)

)

Plaintiffs,)

)

v.)

)

THE STATE OF NORTH CAROLINA,)

et al.,)

)

Defendant.)

_____)

DEPOSITION OF VIOLA FIGUEROA

Volume I

3:42 P.M.

FRIDAY, FEBRUARY 5, 2016

OGLETREE, DEAKINS, NASH, SMOAK & STEWART

4208 SIX FORKS ROAD, SUITE 1100

RALEIGH, NORTH CAROLINA 27609

By: Sophie Brock, RPR, CRR



1 A. No.

2 Q. Sidney Dunston?

3 A. No.

4 Q. Alma Adams?

5 A. Now, I talked to her three times.

6 Q. Okay. Have any of the conversations you've
7 ever had with her been about any of the redistricting
8 cases?

9 A. No.

10 Q. Okay.

11 Steve Bowden?

12 A. No.

13 Q. Jason Coley?

14 A. No.

15 Q. Karl Bertrand Fields?

16 A. No.

17 Q. Pamlyn Stubbs?

18 A. No.

19 Q. Don Vaughan?

20 A. No.

21 Q. Bob Etheridge?

22 A. No.

23 Q. George Graham?

24 A. No.

25 Q. Thomas Chumley?

1 A. No.

2 Q. Aisha Dew?

3 A. No.

4 Q. Geneal Gregory?

5 A. No.

6 Q. Vilma Leake?

7 A. No.

8 Q. Rodney Moore?

9 A. I've talked to him.

10 Q. Talked to him. In what context have you
11 talked with him?

12 A. The same with Ms. Adamson. Seen him at the
13 Democratic functions.

14 Q. Okay. Have any of the conversations you've
15 had with him been about redistricting?

16 A. No.

17 Q. All right.

18 Brenda Martin Stevenson?

19 A. No.

20 Q. Jane Whitley?

21 A. No.

22 Q. Tim Valentine?

23 A. No.

24 Q. Lois Watkins?

25 A. No.

1 Q. Richard Joyner?

2 A. No.

3 Q. Melvin McLawhorn?

4 A. No.

5 Q. Randall Jones?

6 A. No.

7 Q. Bobby Charles Townsend?

8 A. No.

9 Q. Albert Kirby?

10 A. No.

11 Q. Terrence Williams?

12 A. No.

13 Q. Norman Camp?

14 A. No.

15 Q. Mary Poole?

16 A. No.

17 Q. Stephen Smith?

18 A. No.

19 Q. Philip Baddour?

20 A. I know an attorney Phil Baddour, but I don't
21 know if this is the same person.

22 Q. You know Phil Baddour who's an attorney in
23 Goldsboro?

24 A. Yes.

25 Q. All right. How do you know him?

1 A. At chamber functions --

2 Q. So --

3 A. -- at his office functions.

4 Q. So have you ever had any conversations with
5 him about redistricting?

6 A. No.

7 Q. All right.

8 And then the last one here is Douglas Wilson
9 at the very end?

10 A. Yes.

11 Q. And this is the Douglas Wilson we've talked
12 about before; correct?

13 A. I guess it is. I don't know.

14 Q. Yeah, I should -- that is the same name?

15 A. That is the same name of a gentleman I know
16 that talked to me about the redistricting lawsuit.

17 Q. All right. Thank you.

18 I've got one more. I'm sorry that was
19 tedious, and this will be too, but I just, again, want
20 to make sure we touch on everything.

21 This is going to be Exhibit 7.

22 (Exhibit No. 7 was marked for identification.)

23 Q. And, Ms. Figueroa, I'm going to represent to
24 you that this is a similar first page from an amended
25 complaint of another lawsuit filed in 2011 that

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

SANDRA LITTLE COVINGTON, et al.,

Plaintiffs,

vs.

THE STATE OF NORTH CAROLINA,

et al.,

Defendants.

DEPOSITION OF
BRYAN PERLMUTTER

3:00 P.M.

THURSDAY, FEBRUARY 11, 2016

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

4208 SIX FORKS ROAD, SUITE 1100

RALEIGH, NORTH CAROLINA

By: Maren M. Fawcett, RPR, CRR



1 A. Okay.

2 Q. Reva McNair?

3 A. No.

4 Q. Matthew Davis?

5 A. No.

6 Q. Tressie Stanton?

7 A. No.

8 Q. Anne Wilson?

9 A. No.

10 Q. Sharon Hightower?

11 A. No.

12 Q. Kay Brandon?

13 A. No.

14 Q. Goldie Wells?

15 A. No.

16 Q. Gray Newman?

17 A. No.

18 Q. Yvonne Stafford?

19 A. No.

20 Q. Robert Dawkins?

21 A. Yes.

22 Q. Okay. Sara Stohler?

23 A. No.

24 Q. Hugh Stohler?

25 A. No.

1 Q. Octavia Rainey?
2 A. No.
3 Q. Charles Hodge?
4 A. No.
5 Q. Marshall Hardy?
6 A. No.
7 Q. Martha Gardenhight?
8 A. No.
9 Q. Ben Taylor?
10 A. No.
11 Q. Keith Rivers?
12 A. Yes.
13 Q. Romallus Murphy?
14 A. No.
15 Q. Carl White?
16 A. No.
17 Q. Rosa Brodie?
18 A. No.
19 Q. Herman Lewis?
20 A. No.
21 Q. Clarence Albert.
22 A. No.
23 Q. Evester Bailey?
24 A. No.
25 Q. Albert Brown?

1 A. No.

2 Q. Benjamin Lanier?

3 A. No.

4 Q. Gilbert Vaughn?

5 A. No.

6 Q. Avie Lester.

7 A. No.

8 Q. Theodore Muchiteni?

9 A. No.

10 Q. William Hobbs?

11 A. No.

12 Q. Jimmie Ray Hawkins?

13 A. No.

14 Q. Horace P. Bullock?

15 A. No.

16 Q. Roberta Waddle?

17 A. No.

18 Q. Christina Davis-McCoy?

19 A. No.

20 Q. James Oliver Williams?

21 A. No.

22 Q. Margaret Speed?

23 A. No.

24 Q. Larry Laverne Brooks?

25 A. No.

1 Q. Carolyn Allen?

2 A. No.

3 Q. Walter Rogers, Sr.?

4 A. No.

5 Q. Shawn Meachem?

6 A. No.

7 Q. Mary Green Bonaparte?

8 A. No.

9 Q. Samuel Love?

10 A. No.

11 Q. Courtney Patterson?

12 A. No.

13 Q. Willie Sinclair?

14 A. No.

15 Q. Cardes Henry Brown, Jr.?

16 A. No.

17 Q. Jane Stevens?

18 A. No.

19 Q. Okay. You said you know Robert Dawkins?

20 A. Yes.

21 Q. Explain to me your relationship with
22 Mr. Dawkins.

23 A. We have a professional relationship in the
24 context of providing education, civic education-type
25 material to people.

1 Q. How did you meet Mr. Dawkins?

2 A. The Southern Vision Alliance is a statewide --
3 or we mainly work in North Carolina and across the state
4 and so part of my job is to meet with folks in different
5 parts of the state where we have -- we're supporting
6 young people to understand different things that people
7 are working on.

8 Q. Okay. So what does Mr. Dawkins do for a
9 living?

10 A. I believe at the time he was working for
11 Democracy North Carolina.

12 Q. Okay.

13 A. And -- yeah.

14 Q. So Southern Vision Alliance, is that --

15 A. Yes.

16 Q. Southern Vision Alliance, they work with
17 Democracy North Carolina?

18 MS. RIGGS: Object to form, but you can
19 answer.

20 A. Yes. The Southern Vision Alliance has --
21 legally has different projects. Some of those projects
22 have lots of different partners. So one of the projects
23 that I mainly work with sometimes works with Democracy
24 North Carolina.

25 Q. Okay. So the Southern Vision Alliance does

1 just different projects, there's not one overarching
2 thing everyone's always working on all the time; is that
3 fair to say?

4 A. Yeah, I mean, so, you know.

5 Q. I'm just trying to understand the job. This
6 is the first I've heard of it. So have you discussed
7 redistricting with Mr. Dawkins?

8 A. I have not.

9 Q. Okay. I believe you said you know Keith
10 Rivers?

11 A. Yes.

12 Q. Tell me about Keith Rivers.

13 A. What would you like to know?

14 Q. How did you meet Keith Rivers?

15 A. Again, we were supporting students in our
16 leadership development program that go to Elizabeth
17 State University and we got connected as someone that he
18 might be able to help us with some of the work that we
19 were doing there.

20 Q. Okay. Does he -- is he affiliated with
21 Democracy NC, too?

22 A. I don't know.

23 Q. Or was he when you dealt with him?

24 A. Not that I know of.

25 Q. Okay. I believe I forgot to ask this. Do you

1 remember the time frame that you worked with
2 Mr. Dawkins?

3 A. Probably 2013-ish.

4 Q. And what about -- what about with Mr. Rivers?

5 A. About the same time, 2013.

6 Q. And do you remember if Mr. Rivers was
7 connected with any sort of organization?

8 A. At the time I -- from my recollection, I met
9 with him, he was working with the local NAACP chapter in
10 that area.

11 Q. And when is the last time you spoke with
12 Mr. Rivers?

13 A. Probably about a year ago, if not more. We
14 don't have a very regular relationship.

15 Q. Have you ever spoken with him about
16 redistricting?

17 A. I have not.

18 Q. Okay. And I can't remember if I asked you
19 this, have you spoken with Mr. Dawkins about
20 redistricting?

21 A. You asked me that.

22 Q. I'm sorry, refresh your answer.

23 A. No.

24 Q. Okay. Thank you. Bryan, are you responsible
25 for paying your own attorneys' fees?

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

SANDRA LITTLE COVINGTON,)
et al,)
)
 Plaintiffs,)
)
vs.)
)
THE STATE OF NORTH)
CAROLINA, et al.,)
)
 Defendants.)
)

DEPOSITION OF CLAUDE DORSEY HARRIS

11:00 A.M.

FRIDAY, FEBRUARY 12, 2016

OGLETREE DEAKINS NASH SMOAK & STEWART
4208 SIX FORKS ROAD
SUITE 1100
RALEIGH, NORTH CAROLINA

By: Cynthia S. Boyd, RPR



1 Carolina NAACP and the League of Women Voters in
2 North Carolina. Do you see that?

3 A. Uh-huh.

4 Q. And it says, "The League of Women Voters
5 of Northeastern North Carolina, a member-at-large
6 league, i.e., a local league chapter that is trying
7 to be formally recognized but is not currently
8 recognized as an actual local league chapter and
9 which does not have voting rights." Is that
10 correct?

11 A. Correct.

12 Q. Do you know if the member-at-large league
13 is on its way to becoming recognized?

14 A. Yes. We were recognized by the State as
15 an actual league but the national has not
16 recognized us yet.

17 Q. Okay.

18 A. So we were trying to become a chapter.
19 But whether we are a chapter or we remain a MIL, we
20 still are nonpartisan.

21 Q. Okay. I believe you answered this but
22 refresh my memory. When did you join the League of
23 Women Voters?

24 A. In the spring of 2014, I and several
25 people met and formed this chapter in northeastern

1 North Carolina. The reason that we formed the
2 chapter was because we wanted to empower people
3 with better knowledge of politics and we wanted
4 them to be aware of what is happening in the
5 political world, and so we formed the chapter.
6 That's when. It was around 2014 that we formed the
7 MIL, the member-at-large.

8 Q. Okay. Before that, were you a member of
9 the parent League of Women Voters of North
10 Carolina?

11 A. No.

12 Q. So your first involvement was --

13 A. Yeah. I was going to join the state
14 league as an at-large member or maybe the league in
15 Dare County, the Outer Banks, and I didn't. We
16 just formed one. There were several people who
17 were interested in forming one.

18 Q. All right. And for the NAACP, do you
19 remember when you joined them?

20 A. It was about 2014.

21 Q. Okay.

22 A. I went to a church where the Reverend
23 Barbour was a speaker and I joined then.

24 Q. Reverend William Barbour?

25 A. Yeah.

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

SANDRA LITTLE COVINGTON, et al.,)

)

)

Plaintiffs,)

)

vs.)

)

THE STATE OF NORTH CAROLINA,)

et al.,)

)

Defendants.)

VIDEOTAPED DEPOSITION OF DOUGLAS WILSON

11:10 A.M.

FRIDAY, FEBRUARY 19, 2016

POYNER SPRUILL, LLP
301 FAYETTEVILLE STREET
SUITE 1900
RALEIGH, NORTH CAROLINA

By: Tammy Johnson, CVR-CM-M



1 A. All right.

2 Q. And even if you anticipate where I'm going
3 with a question, please wait for me to finish
4 the question before you respond, and I, in
5 turn, will try to wait for you to finish your
6 answer before I ask you another question.

7 A. Uh-huh.

8 Q. If some time I don't allow you to finish your
9 answer, just please let me know and I'll --
10 I'll allow you to finish it before I ask my
11 next question. And do you understand that you
12 have an obligation to testify truthfully
13 today?

14 A. Yes, I do.

15 Q. And is there any reason why you cannot testify
16 truthfully and completely in response to my
17 questions today?

18 A. No.

19 Q. Now, Mr. Wilson, what is your current
20 occupation?

21 A. I'm the Deputy Executive Director for the
22 North Carolina Democratic Party.

23 Q. How long have you held that position?

24 A. It will be a year in May of this year.

25 Q. And have you worked for the North Carolina

1 Democratic Party before then?

2 A. Yes, I have.

3 Q. And when was that?

4 A. 2012 to 2014.

5 Q. And do you remember what months or --

6 A. I started in April of 2012. I can't give you
7 the exact day. And I left in March of 2014.

8 Q. And what did you leave to do?

9 A. I took a leave of absence to go work for
10 Senator Kay Hagan on her campaign as her
11 political director.

12 Q. Now, from 2012 to 2014, what was your role
13 with the North Carolina Democratic Party?

14 A. I was the political director.

15 Q. And what was your role with Senator Hagan's
16 campaign?

17 A. Same -- same capacity, political director.

18 Q. And before you worked for the North Carolina
19 Democratic Party --

20 A. Uh-huh.

21 Q. -- in 2012, what did you do?

22 A. For a period of time, I was -- I was out of
23 work, but from 2007 to 2008, I -- I worked for
24 President Barack Obama on his campaign in
25 South Carolina. And then after that, I worked

1 Q. And have you had any discussions with
2 Ms. Sloane about this matter?

3 A. About this case right here?

4 Q. Well, about the -- the case that's known as
5 Covington versus the State of North Carolina.

6 A. I did contact her. She was one of the
7 potential plaintiffs that I was asked to
8 identify in the case.

9 Q. And how did you select Ms. Sloane as a
10 potential plaintiff?

11 A. There is a -- I'm trying to find the correct
12 word for it. There is a database called The
13 Voter File that the Board of Elections
14 provides the information for registered voters
15 in this -- in that. It's just something that
16 is used by both parties. And she -- I
17 researched her name to see if she resided in
18 one of the districts that I was asked to
19 identify potential plaintiffs.

20 Q. And did you discuss Ms. Sloane's participation
21 in the Covington case with Ms. Dew?

22 A. I don't recall.

23 Q. How did you get Ms. Sloane's contact
24 information?

25 A. From The Voter File.

1 Q. And do you know how funds were raised to pay
2 for the attorneys' fees or costs in the
3 Dickson lawsuit?

4 A. No.

5 Q. Did you ever inquire about that?

6 A. No.

7 Q. And why not?

8 A. I just -- I just didn't. I -- I didn't have
9 any desire to.

10 Q. To know?

11 A. No.

12 Q. Were you ever concerned that you would have to
13 pay the costs for your attorneys to represent
14 you in that lawsuit?

15 A. No.

16 Q. Okay. And why not?

17 A. Because I didn't hear from anybody.

18 Q. Okay.

19 (WHEREUPON, Defendant's Exhibit 3 was
20 marked for identification.)

21 Q. So, Mr. Wilson, I'm going to hand you another
22 document now I'm going to mark as Wilson
23 Exhibit 3. Is Wilson Exhibit 3 a document
24 that you recognize?

25 A. Yes.

1 That's not what he said he did.

2 A. No, I didn't.

3 Q. Well -- well, did Mr. Falmlen tell you who
4 else was involved in the lawsuit?

5 A. I don't remember him telling me that.

6 Q. I've already given you a copy of the --

7 A. Of, Exhibit 3, yes.

8 Q. Yes, sir.

9 A. Uh-huh.

10 Q. And why don't we start on page 5?

11 A. Okay. I'm there.

12 Q. And there's a list of names under the heading
13 "Parties" on page 5. Do you see that?

14 A. Yes, I do.

15 Q. All right.

16 A. Uh-huh.

17 Q. Why don't we go person-by-person here and --
18 and you let me know if you know any of these
19 individuals?

20 A. Okay.

21 Q. Okay. The first --

22 A. I -- I'm sorry.

23 Q. Go ahead. The -- go ahead.

24 A. Okay, yeah. I do not know Sandra Covington.

25 Q. And how about Mr. Arrington?

1 A. Yes, I do.

2 Q. How do you know him?

3 A. I know him as the former county chair for -- I
4 can't remember the county right now. I'm --
5 drew -- draw a blank on that, but I know him
6 as being a former county chair.

7 Q. And when you say someone is a county chair,
8 you mean with the Democratic Party?

9 A. Correct.

10 Q. And is Mr. Arrington someone that you
11 discussed this lawsuit with?

12 A. Yes.

13 Q. And when did you have a discussion with
14 Mr. Arrington about this lawsuit?

15 A. I can't remember the date.

16 Q. Do you remember what you said to him about the
17 lawsuit?

18 A. He was one of the potential plaintiffs that I
19 -- I -- that I was -- that I identified, and I
20 just told him that there was a potential case
21 being filed and if he was interested in being
22 a plaintiff, an a- -- an attorney would
23 contact him.

24 Q. Well, did he tell you he was interested in
25 being a plaintiff?

1 lawsuit?

2 A. I don't know.

3 Q. You don't remember whether you had a meeting
4 with -- about any -- with -- with any group of
5 people about finding plaintiffs to be involved
6 in a lawsuit other than the meeting you
7 already described --

8 A. Yeah. That was -- that was the only meeting
9 I've had.

10 Q. All right. And did you start looking for
11 plaintiffs right after you met with
12 Mr. Falmlen?

13 A. I can't -- I can't recall if it was exactly
14 after. I just know that there was a time
15 where I started doing it, but I don't know
16 what the -- if it was exactly after. Yeah, I
17 don't remember.

18 Q. Do you remember when you completed that
19 process?

20 A. I can't remember.

21 Q. Well, looking back at page 5 --

22 A. Uh-huh.

23 Q. -- of Exhibit 3, the next name is Herman
24 Lewis. Is that a name that you're familiar
25 with?

1 A. No.

2 Q. How about Viola Figueroa?

3 A. Yes.

4 Q. How do you know Ms. Figueroa?

5 A. She is a member of the African-American Caucus
6 in Wayne County.

7 Q. And do you remember the first time that you
8 had a conversation with Ms. Figueroa about
9 this lawsuit?

10 A. I can't recall the exact time, but I remember
11 contacting her as a potential plaintiff.

12 Q. How did you know Ms. Figueroa?

13 A. As I stated, she was a member of the
14 African-American Caucus.

15 Q. Did you work with her on the Kay Hagan
16 campaign?

17 A. No, I did not. She -- I didn't work with her
18 directly. I -- I heard that she helped out in
19 the -- in her area, but I didn't work with
20 her. She wasn't an employee of the campaign.

21 Q. And did Ms. Figueroa tell you that she would
22 agree to be a plaintiff in a lawsuit?

23 A. Yes.

24 Q. And do you remember how she agreed to do that?
25 Was it over e-mail or telephone or in person?

1 A. I can't remember the exact type of
2 communication.

3 Q. The next person listed is Crystal Graham
4 Johnson, paragraph 14.

5 A. This is not a name that I -- I recognize.

6 Q. How about Marcus Walter Mayo in paragraph 15?

7 A. No. I don't recognize that name.

8 Q. Julian Charles Pridgen, Sr.?

9 A. Not a name I recognize.

10 Q. Page 17, there's Gregory Keith Tucker.

11 A. I don't recognize that name.

12 Q. Do you know someone named Betsy Leach?

13 A. Yes.

14 Q. And how do you know Ms. Leach?

15 A. Ms. Leach is the -- she used to be the county
16 chair for -- for Pitt County.

17 Q. Did you talk with Ms. Leach --

18 A. I don't --

19 Q. -- about --

20 A. I don't recall talking to her.

21 Q. Do you think it's possible you could have?

22 A. I -- I -- honestly, I -- I don't -- I don't
23 remember if I did.

24 Q. Now, did you send out a blanket e-mail to
25 county chairs asking them if they knew

1 potential plaintiffs? Or did you send out
2 e-mails to certain leaders in the party? What
3 -- what contact did you have with people in
4 the party apparatus, if you will, about
5 looking for plaintiffs?

6 A. I -- I did not send out a blanket e-mail to
7 county chairs, nor did I send it out to party
8 leaders in the party.

9 Q. Well, did you contact anybody in the party
10 other than people who ended up being
11 plaintiffs about --

12 A. No. It --

13 Q. -- the lawsuit?

14 A. No, I did not.

15 Q. And so your testimony is you don't remember
16 talking to Mr. Tucker?

17 A. Yeah. I -- I don't remember --

18 Q. Okay.

19 A. -- talking to him.

20 Q. Now, if Mr. Tucker testified at his deposition
21 that he believed that he talked to you about
22 the lawsuit --

23 A. Uh-huh.

24 Q. -- do you think he would be mistaken?

25 A. Like I said, I -- I don't remember. Honestly,

1 I don't remember.

2 Q. How about paragraph 18, Cynthia Martin?

3 A. I -- I honestly don't remember talking to her.

4 Q. How about John Raymond Verdejo?

5 A. Yes. I do recall talking to him.

6 Q. When did you talk to Mr. Verdejo?

7 A. As I stated earlier, asking if he was
8 interested in being a plaintiff in this
9 potential case.

10 Q. How did you go about doing that?

11 A. It was -- I believe it was a phone call.

12 Q. Do you remember when?

13 A. I don't.

14 Q. Do you remember how many phone calls that you
15 had with Mr. Verdejo?

16 A. I do remember it was just one call.

17 Q. Do you remember what you told Mr. Verdejo
18 about the lawsuit?

19 A. Just that there was -- that there's a
20 potential lawsuit coming up and if he was
21 interested in being a plaintiff, that an
22 attorney would -- would contact him.

23 Q. And did he tell you at that time he was
24 interested?

25 A. Yes, he did.

1 Q. How about paragraph 20, Dedreana Irene
2 Freeman?

3 A. Yes.

4 Q. Do you --

5 A. I con- --

6 Q. -- know her?

7 A. I do know her. She was a classmate of mine in
8 IOPL, the Institute of Political Leadership,
9 and I remember contacting her through phone,
10 and I left her a -- a -- I left her a
11 voicemail, and I had -- and I didn't hear from
12 her from -- from then.

13 Q. Do you know if anyone else later contacted
14 her?

15 A. I -- I don't know.

16 Q. Did you have anyone else at the North Carolina
17 Democratic Party who was working with you to
18 identify potential plaintiffs for this
19 lawsuit?

20 A. No. It was just me.

21 Q. Do you have an outreach coordinator or
22 coalitions director or something like that at
23 party headquarters?

24 A. Huh-uh. No. No, we don't. I'm sorry. No,
25 we don't.

1 Q. Is there someone with the last name Fellman
2 who works at the party?

3 A. Sarah Fellman, yes.

4 Q. Okay. What is her --

5 A. Now, when you -- when you mentioned in your
6 previous question the title, the title is
7 completely -- that's why I said, no, I don't
8 recognize that title. But she -- she is with
9 the party.

10 Q. What is her title?

11 A. She is the campus coordinator and campus --
12 campus coordinator and voter protection
13 outreach. It's -- it's a long title. I can't
14 get it -- get it correct.

15 Q. Do you know if she contacted any prospective
16 plaintiffs about this lawsuit?

17 A. No. Like I said, I was the one that was doing
18 -- that was contacting potential plaintiffs.

19 Q. Was your answer, no, she did not, or that you
20 don't know if she did?

21 A. No, she did not.

22 Q. Do you know if Ms. Keever contacted any
23 potential plaintiffs in the lawsuit?

24 A. No.

25 Q. How about paragraph 21?

1 A. M- -- Milo P- -- Pyne? That's not a name that
2 I rec- -- that I recognize.

3 Q. How about Juanita Rogers?

4 A. Rogers. I don't know that. I -- I don't -- I
5 don't know her.

6 Q. How about Valencia Applewhite?

7 A. I do know of her.

8 Q. Is she someone that you contacted about this
9 lawsuit?

10 A. No. I -- I don't remember contacting her.
11 The only thing I know about her is that she
12 lives in Fayetteville and I think she was -- I
13 think she ran for mayor. But I -- I didn't
14 contact her.

15 Q. And have you had any conversations with her
16 about this lawsuit?

17 A. No.

18 Q. Looking on page 7 --

19 A. Uh-huh.

20 Q. -- David Lee Mann?

21 A. It's not a name that I recognize.

22 Q. What about Mary Evelyn Thomas?

23 A. The name looks familiar, but I don't know her.
24 It just looks familiar to me. That's all.

25 Q. Well, Ms. Thomas testified in her deposition

1 that she received a phone call --

2 A. Uh-huh.

3 Q. -- about a year ago from a man who worked for
4 the North Carolina Democratic Party.

5 A. Uh-huh.

6 Q. So if she received a phone call like that,
7 would --

8 A. Uh-huh.

9 Q. -- the only man that would have been calling
10 her would have been you?

11 A. I honestly can't remember. Like I said, it's
12 a name that I recognize, but I can't honestly
13 say to you that I called her because I just
14 can't remember.

15 Q. But you're not aware of any other man working
16 for the North Carolina Democratic --

17 A. Yeah. I --

18 Q. -- Party?

19 A. I'm not aware of that, of anybody else that
20 would -- would call her.

21 Q. How about paragraph 26, Jamal Trevon Fox?

22 A. I know Mr. Fox as a county -- excuse me --
23 city council member of -- in Greensboro. I
24 did not -- I -- well, from what I remember, I
25 did not contact Mr. Fox.

1 Q. Have you discussed this case with Mr. Fox?

2 A. No, I haven't.

3 Q. How about Channelle Darlene James?

4 A. That name does not look familiar to me.

5 Q. How about Catherine Wilson Kimel?

6 A. I recognize the last name, but I don't
7 recognize -- I don't know a Catherine Kimel.

8 Q. Do you know someone with the last name Kimel?

9 A. I think there's a -- I think I -- I recognize
10 -- I remember -- I know somebody that's on the
11 Board of Elections in Greensboro with the last
12 name Kimel.

13 Q. Is the person male or female?

14 A. He is, of course, male, yeah.

15 Q. Now, Ms. Kimel also testified that she got a
16 phone call from a man with the Democratic
17 Party.

18 A. Uh-huh. Yeah. As I stated earlier, it's not
19 a name I remember and I don't recall calling
20 her.

21 Q. How about Vanessa Vivian Martin?

22 A. I don't -- I don't recall that name.

23 Q. Is there any other man who works for the North
24 Carolina Democratic Party or was working there
25 last year in the April or May timeframe?

1 A. Mr. Jesse Presnell.

2 Q. How do you spell his first name?

3 A. Jesse?

4 Q. Yes.

5 A. J-E-S-S-E.

6 Q. What's -- how do you spell the last name?

7 A. P-R-E-S, like Sam, N as in Nancy, E as in
8 Edward, L as in Larry, L as in Larry.

9 Q. Jesse Presnell.

10 A. Uh-huh.

11 Q. Okay. What is his role with the party?

12 A. He is the data director.

13 Q. How long has he worked there?

14 A. It will be a year next month, I believe.

15 Q. How about Ms. Fellman? I don't think I asked
16 you how long she had been there.

17 A. Ms. Fellman has been with us now since January
18 of this year. Last year she was just an
19 intern.

20 Q. She was in the building?

21 A. What, last year?

22 Q. Yes.

23 A. She was per- -- periodically. She was an
24 intern.

25 Q. Do you recall when her internship started?

1 A. I don't remember when it started.

2 Q. Now, how about in paragraph 30, page 7 --

3 A. Uh-huh.

4 Q. -- a lady named Susan Sandler Campbell?

5 A. Uh-huh. I recognize that name. I know her.

6 Q. Okay. Did you contact her about this lawsuit?

7 A. I did.

8 Q. How did you go about doing that?

9 A. I can't remember the exact way of contacting
10 her, but I do remember that she did not want
11 to be a plaintiff in the case.

12 Q. How do you remember that?

13 A. I remember -- I just remember that because she
14 -- she was very -- she was -- she was very
15 concerned about -- she just didn't want to do
16 it, so I just remember that.

17 Q. Did she tell you that she didn't want to be a
18 plaintiff, I guess; is that what you're
19 saying?

20 A. Yeah. She just -- then she -- I can't
21 remember what the reason that she gave me, but
22 she said that she -- she didn't -- she didn't
23 want to be -- be a plaintiff.

24 Q. Did you talk to her again?

25 A. I can't recall talking to her again because

1 after that, she -- after she told me she
2 wasn't interested, I just didn't, so, yeah.

3 Q. Do you know if anyone else later talked to
4 her?

5 A. Not that I know of, no.

6 Q. Looking at page 8, paragraph 31, someone named
7 Marshall Ansin, do you know that person?

8 A. Ansin. No. I don't -- I don't recognize that
9 name.

10 Q. How about Rosa Mustafa?

11 A. I do rec- -- I do recognize Rosa.

12 Q. Is she someone you contacted about this
13 lawsuit?

14 A. I don't remember.

15 Q. Do you remember working with Ms. Mustafa on
16 the Kay Hagan campaign?

17 A. Yes, I do.

18 Q. What was her role with the Kay Hagan campaign?

19 A. She was a field organizer in Charlotte. I
20 don't know what section of the city, but I
21 know she was a field organizer.

22 Q. And you can't recall whether you talked to her
23 about this lawsuit at all?

24 A. Yes. That's correct.

25 Q. How about Antoinette Dennis Mingo, paragraph

1 33?

2 A. Yes. I do recognize her name.

3 Q. Okay. Did you speak with her about this
4 lawsuit?

5 A. She was somebody that I identified as a
6 potential plaintiff.

7 Q. Did she agree to -- to be a plaintiff after
8 you spoke with her?

9 A. Yes, she did. She did.

10 Q. Do you remember what you told Ms. Mingo about
11 the lawsuit?

12 A. Just -- I just told her, as I stated earlier,
13 that there was a potential case coming up and
14 just asked -- asked her if she was interested
15 in becoming a plaintiff in the case.

16 Q. Did you have any other conversation with
17 Ms. Mingo other than the one?

18 A. No. After she agreed, that was it.

19 Q. And we talked about Ruth Sloane earlier?

20 A. Yes.

21 Q. And she is somebody else that you contacted to
22 join the lawsuit; is that right?

23 A. Correct. You want me to go to -- go to 35?

24 Q. Yes.

25 A. All right. I do not recognize the name Claude

1 Harris.

2 Q. How about James Edward Alston?

3 A. Huh-uh. I don't recognize that name.

4 Q. How about Bryan Olshan Perlmutter, paragraph
5 37?

6 A. Yes, I see. And I don't recognize his name.

7 Q. Page 9, paragraph 38 --

8 A. Uh-huh.

9 Q. -- La'Tanta Denishia McCrimmon.

10 A. I'm surprised you were able to pronounce her
11 name that well. Yes, I -- I do know her.

12 Q. Okay. And is she someone that you contacted--

13 MR. SPEAS: I'm sorry. Which one
14 are -- which -- which paragraph?

15 MR. MCKNIGHT: We're -- we're
16 talking about paragraph 38 on page 9.

17 MR. SPEAS: Okay. Okay. I got you.

18 MR. MCKNIGHT: Sure.

19 MR. SPEAS: Thank you for catching
20 me up.

21 MR. MCKNIGHT: Sure.

22 BY MR. MCKNIGHT:

23 Q. Ms. McCrimmon, is she someone you contacted
24 about this lawsuit?

25 A. No.

1 Q. But you said you recognize the name?

2 A. Yes. I -- I know her.

3 Q. And how do you know her?

4 A. I know her from just working with -- I think
5 she's worked for Larry Kissel.

6 Q. And he was a former Congressman; is that
7 right?

8 A. Yes, correct. Uh-huh.

9 Q. How about Catherine Medlock-Walton, paragraph
10 39?

11 A. Huh-uh. I don't recognize that name.

12 Q. How about Mark Englander?

13 A. No, don't recognize that name.

14 MR. MCKNIGHT: Why don't we take a
15 short break here?

16 MR. SPEAS: Sure. Sure.

17 THE VIDEOGRAPHER: We're off the
18 record at 12:12.

19 (Brief Recess - 12:12 p.m. to 12:25 p.m.)

20 THE VIDEOGRAPHER: This is tape
21 number two in the deposition of Douglas A.
22 Wilson. The time is 12:25.

23 BY MR. MCKNIGHT:

24 Q. Back on the record, Mr. Wilson --

25 A. Okay.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NO. 1:15-CV-00399

SANDRA LITTLE COVINGTON,)

et al.,)

)

Plaintiffs,)

)

vs.)

)

)

THE STATE OF NORTH CAROLINA,)

et al.,)

)

Defendants.)

)

DEPOSITION OF MARSHALL ANSIN

(Taken by Defendants)

Charlotte, North Carolina

Thursday, February 4, 2016



1 document 3 that had not been answered with respect to
2 you, so they were answered in this document. I want
3 to ask you to turn to interrogatory five.

4 And I'm going to hand you some other
5 documents now while we discuss this. Interrogatory
6 five just asks you if you have any sort of
7 relationship with any of the plaintiffs in the
8 Dickson cases, the Dickson case, that is, the North
9 Carolina Conference of the NAACP versus State of
10 North Carolina case or the Harris versus McCrory
11 case.

12 And I guess the first thing I want to ask
13 you is do you know anything about those cases?

14 A. I do not.

15 MR. MCKNIGHT: I want to hand you a
16 document I'm going to mark as Exhibit 5, Ansin
17 5.

18 (EXHIBIT NO. 5 MARKED FOR IDENTIFICATION.)

19 BY MR. MCKNIGHT:

20 Q. I want you to take a look at the names of
21 the plaintiffs who are listed here. These are the
22 parties who were involved in the Dickson versus Rucho
23 lawsuit. And will you look through the names of the
24 plaintiffs who are listed at the top and let me know
25 if you recognize any of those names.