

**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.*,

Defendants.

**PLAINTIFFS' MOTION TO
ENFORCE SCHEDULING ORDER**

NOW COME Plaintiffs by and through their undersigned counsel, and pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure and Local Rule 7.3, move the Court to enforce the Scheduling Order against Defendants and to bar Defendants from taking two expert depositions by enforcing the existing scheduling order. In support of this Motion, Plaintiffs show the Court:

1. This Court entered a scheduling order on October 9, 2015, which established discovery and motion deadlines and set a trial date for April 11, 2016. (D.E. # 25).

2. The scheduling order established November 30, 2015 as the deadline for Defendants to disclose all expert reports. (D.E. # 25).

3. On November 30, 2015, Defendants disclosed the following experts: Thomas Hofeller, Trey Hood, and Sean Trende.

4. On January 6, 2016, Defendants' counsel served on Plaintiffs' counsel deposition notices and subpoenas to Dr. Stephen Ansolabehere and Dr. Barry Burden. See Exhibit B to Plaintiffs' Memorandum.

5. Defendants did not disclose Dr. Ansolabehere and Dr. Burden as expert witnesses in this case.

6. Dr. Ansolabehere and Dr. Burden have served as expert witnesses for plaintiffs in other cases. Dr. Ansolabehere served as an expert witnesses for the plaintiffs in *Harris v. McCrory*, 1:13-cv-949 (M.D.N.C.) relating to congressional redistricting in North Carolina. Dr. Burden served as an expert witness for plaintiffs in *North Carolina State Conference of the NAACP v. McCrory*, No. 1:13-cv-658 (M.D.N.C.) relating to other voting laws in North Carolina.

7. To Plaintiffs' knowledge, Dr. Ansolabehere and Dr. Burden are not familiar with this case and were not involved with redistricting in North Carolina in 2011. Thus, they cannot serve as fact witnesses for this case.

8. The notices and subpoenas were not served on Dr. Burden until January 13, 2016, and, to the best knowledge of Plaintiffs' counsel, have not yet been served on Dr. Ansolabehere.

9. The depositions are scheduled for February 11, 2016 for Dr. Burden in Milwaukee, Wisconsin and February 18, 2016 for Dr. Ansolabehere in Boston, Massachusetts.

10. Because Defendants did not timely disclose these expert witnesses, they have violated the scheduling order.

11. Plaintiffs move the Court to enforce the scheduling order and bar Defendants from taking these depositions.

Respectfully submitted, this the 27th day of January, 2016.

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/s/ Edwin M. Speas, Jr.

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LOCAL RULE 37.1 CERTIFICATE

The undersigned hereby certifies that after personal consultation and diligent attempts to resolve differences the parties are unable to reach an accord on the issues in the foregoing motion.

On December 21, 2015, the undersigned conferred by email with Mr. Farr, counsel for Defendants, about the issues raised in the motion and specifically the use of expert testimony of undisclosed and unretained experts. A copy of this correspondence is attached to Plaintiffs' supporting brief as Exhibit A. The parties were unable to reach an accord on the issues raised in Plaintiffs' motion during this conference.

Respectfully submitted the 27th day of January, 2016.

/s/ Edwin M. Speas, Jr. _____
Edwin M. Speas, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing Plaintiffs' Motion to Enforce Scheduling Order, with service to be made by electronic filing with the Clerk of the Court using the CM/ECF System, which will send a Notice of Electronic Filing to all parties with an e-mail address of record, who have appeared and consent to electronic service in this action.

This the 27th day of January, 2016.

/s/ Edwin M. Speas, Jr.
Edwin M. Speas, Jr.

Counsel for Plaintiffs

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**[PROPOSED] ORDER ON
PLAINTIFFS'
MOTION TO ENFORCE
SCHEDULING ORDER**

Plaintiffs have moved the Court to enforce the scheduling order this Court entered on October 9, 2015, which included a deadline for Defendants' disclosure of expert witnesses and their expert reports on November 30, 2015. For good cause shown, **IT IS HEREBY ORDERED** that Plaintiffs' Motion to Enforce the Scheduling Order is **GRANTED**, and that pursuant to Fed. R. Civ. P. 26(a)(2) and Fed. R. Civ. P. 37(c)(1), Defendants are not allowed to use any deposition, affidavit or other testimony from Drs. Burden or Ansolabehere to supply evidence on a motion, at a hearing, or at a trial in this action.

So ordered, this the _____ day of January, 2016.

By: _____