

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**Louis Agre, William Ewing, Floyd Montgomery,
Joy Montgomery, and Rayman Solomon,**

Plaintiffs,

v.

**Thomas W. Wolf, Governor of Pennsylvania,
Pedro Cortes, Secretary of State of
Pennsylvania, and Jonathan Marks,
Commissioner of the Bureau of Elections, in
their official capacities,**

Defendants.

Civil Action No. 2:17-cv-4392

**PROPOSED INTERVENORS' MOTION TO AMEND PRE-TRIAL SCHEDULE RE:
DISCLOSURE OF THE IDENTITIES OF PLAINTIFFS' EXPERTS AS WELL AS A
BRIEF SUMMARY OF THEIR CONTEMPLATED OPINIONS**

Proposed Intervenor Defendants Michael C. Turzai, in his official capacity as Speaker of the Pennsylvania House of Representatives, and Joseph B. Scarnati, III, in his official capacity as Pennsylvania Senate President Pro Tempore (collectively, "Intervenor Defendants"), file this Motion to Amend Pre-Trial Schedule re: Disclosure of the Identities of Plaintiffs' Experts as Well as a Brief Summary of Their Contemplated Opinions.

1. As the Court is likely aware, the October 10, 2017 Scheduling Order entered in this action provided that Plaintiffs would serve their expert reports by October 24, 2017, while Defendants' expert reports would be served by November 22, 2017, or 29 days later (the "Scheduling Order"). ECF No. 20.

2. By Order dated October 23, 2017 (the “10/23 Order”), the Court amended the Scheduling Order as follows: “Plaintiffs’ expert reports shall be served by November 7, 2017 and Defendants’ expert reports shall be served by November 21, 2017,” thereby reducing to 14 days the deadline for submitting rebuttal reports. ECF. No. 43.

3. Prior to entry of the 10/23 Order, counsel for Plaintiffs advised the Court as follows: “To clarify: *Plaintiffs have three experts*. Plaintiffs are merely asking the Court for additional time to file their expert reports.” ECF No. 42 (emphasis added).

4. The amendment of the expert report deadlines is plainly prejudicial to Proposed Intervenors, who yesterday filed their Motion to Intervene as Defendants in this action, in that it reduces by more than 50% the amount of time that Proposed Intervenors will have to not only assess what is disclosed in Plaintiffs’ experts’ reports, but to attempt to locate their own experts to assess, and potentially address, what is contained in those reports (and issue their own reports), and depose Plaintiffs’ experts.

5. But, the Court can potentially alleviate some of the prejudice that the 10/23 Order imposes upon Proposed Intervenors. As identified above, Plaintiffs apparently already have three experts. *See* ECF No. 42; *see also* Fed.R.Civ.P. 16(b)(4) (affording the court discretion to amend a scheduling order upon a showing of good cause).

6. As such, Plaintiffs should be compelled to promptly provide to Proposed Intervenors and Defendants: (1) each such expert’s name, as well as a current *curriculum vitae* or resume; and (2) a brief summary of the opinions that such expert is expected to offer at trial.¹

¹ In terms of a “brief summary,” Proposed Intervenors contemplate the provision of enough information to enable Proposed Intervenors to understand the specific topics such experts intend to opine upon, so that Proposed Intervenors can promptly commence their search for potential rebuttal experts.

7. Promptly affording Proposed Intervenors and Defendants this information will enable Proposed Intervenors and Defendants to immediately begin searching for potential rebuttal experts who are able to work within the deadlines established by the Scheduling Order, as amended by the 10/23 Order. This is also fair as under the current schedule Plaintiffs are afforded over a month from the filing of their Complaint to locate experts and produce reports.

8. Conversely, absent such relief, Proposed Intervenor and Defendants are forced to remain in the unfair, prejudiced, and likely untenable, situation of having to: (1) assess Plaintiffs' experts' reports; (2) assess the types of experts that they may want to retain to rebut some or all of what is set forth in Plaintiffs' experts' reports; (3) locate experts that can work within the Court's 14-day deadline; and (4) assist in the preparation of rebuttal reports, all within the 14 days following receipt of Plaintiffs' expert reports. Proposed Intervenors will also have to prepare for and conduct the depositions of Plaintiffs' experts once disclosed.

9. In light of the foregoing, good cause exists to support amending the Scheduling Order as set forth in the Proposed Order filed along with this Motion.

WHEREFORE, Proposed Intervenors respectfully request that the Court afford them the relief articulated in the proposed order submitted herewith; specifically that Plaintiffs be ordered to provide to counsel for Proposed Intervenors and Defendants by no later than October 26, 2017 the following information for each of the experts Plaintiffs contemplate calling at trial: (1) the expert's name, and current *curriculum vitae* or resume; and (2) a brief summary of the opinions

that such expert is expected to offer at trial.²

Dated: October 25, 2017

Respectfully submitted,

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² Proposed Intervenor's Motion for Reconsideration of the Scheduling Order by Three Judge Panel (ECF No. 31), which asks the Court to revisit the Scheduling Order in its entirety, remains pending before the Court.

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ORDER

AND NOW, this ____ day of _____, 2017, upon consideration of the Motion to Amend Pre-Trial Schedule re: Disclosure of the Identities of Plaintiffs’ Experts as Well as a Brief Summary of Their Contemplated Opinions, filed by Michael C. Turzai, in his official capacity as Speaker of the Pennsylvania House of Representatives, and Joseph B. Scarnati, III, in his official capacity as Pennsylvania Senate President Pro Tempore (the “Motion”), and any responses thereto, it is hereby **ORDERED** that the Motion is **GRANTED**. It is further **ORDERED** that by no later than October 26, 2017, Plaintiffs shall provide to counsel for Proposed Intervenors and counsel for Defendants the following information for each of the experts they contemplate calling at trial: (1) the expert’s name, and current *curriculum vitae* or resume; and (2) a brief summary of the opinions that such expert is expected to offer at trial.

BY THE COURT:

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CERTIFICATE OF SERVICE

The undersigned certifies that on October 25, 2017, the foregoing was served upon the following Counsel of Record via email:

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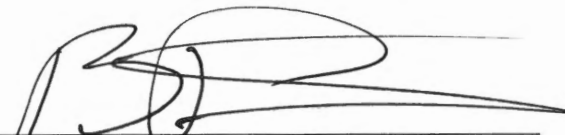
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Dated: October 25, 2017



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