

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

FRANK HEINDEL,
PHIL LEVENTIS,

Plaintiffs,

v.

MARCI ANDINO, *Executive Director of the
South Carolina State Election Commission, in
her official capacity,*
BILLY WAY, JR., *Chair of the South Carolina
State Election Commission, in his official
capacity,*
MARK A. BENSON, MARILYN BOWERS, AND
NICOLE SPAIN WHITE, *Members of the South
Carolina State Election Commission, in their
official capacity,*

Defendants.

CASE NO. 3:18-cv-01887-DCC

MOTION TO STAY

**DEFENDANTS' MOTION TO STAY SCHEDULING ORDER AND
DISCLOSURE AND CONFERENCE REQUIREMENTS**

Pursuant to Local Rule 16.00(C), Defendants move to stay the entry of any scheduling order, and all federal and local civil rule disclosure and conference requirements, until their pending first motion for summary judgment has been ruled upon. *See* Local Civ. Rule 16.00(C) (D.S.C.) (“The court may stay entry of the scheduling order(s) and all federal and local civil rule disclosure and conference requirements pending resolution of a . . . dispositive motion. Any party desiring a stay on this basis shall file a separate motion to stay. No consultation or separate memorandum is required.”); *see also* Fed. R. Civ. P. 26(a), (c), (f). On July 30, 2018, Defendants moved for summary judgment contending Plaintiffs lack standing—a prerequisite to the Court’s exercise of jurisdiction in this case. (Dkt. 5); *see Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561

(1992) (“[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III. . . . The party invoking federal jurisdiction bears the burden of establishing [the] elements [of standing]. . . . [T]hey are not mere pleading requirements but rather an indispensable part of the plaintiff’s case . . .”).

Here, staying disclosures and the scheduling order would be appropriate. Depending on the Court’s ruling, Defendants’ dispositive motion could resolve the case—mooting any discovery related concerns (*i.e.* disclosures, scheduling, *etc.*). *See, e.g., Cuyler v. Dep’t of Army*, No. 3:08-3261-CMC, 2009 WL 1749604, at *8 (D.S.C. June 22, 2009) (upholding the Magistrate’s grant of a defendant’s motion to stay, and noting that the defendant “could and should have avoided the discovery-related concerns by filing a motion to stay deadlines and discovery [under Rule 16.00(C)] at the same time it filed its motion . . .”). Further, Defendants’ motion to stay does not prejudice Plaintiffs because discovery has not yet begun in full. *See, e.g., Regan v. City of Charleston, S.C.*, No. 2:13-CV-3046-PMD, 2015 WL 1518102, at *2 (D.S.C. Mar. 31, 2015) (denying a motion to stay under Rule 16.00(C) where a consent scheduling order had already been entered and discovery was about to close).

Accordingly, Defendants respectfully ask the Court to stay any and all scheduling, disclosure, and conference requirements until their summary judgment motion is resolved.

[Signature block on the next page.]

Respectfully Submitted,

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October 17, 2018
Columbia, SC