

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

JOAQUÍN CARCAÑO, et al.,

Plaintiffs,

v.

PATRICK MCCRORY, et al.,

Defendants.

No. 1:16-cv-00236-TDS-JEP

**PLAINTIFFS' RESPONSE TO MOTION FOR EXTENSION OF TIME
FILED BY DEFENDANTS UNIVERSITY OF NORTH CAROLINA,
BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH
CAROLINA, AND W. LOUIS BISSETTE, JR.**

Plaintiffs partially oppose the motion for an extension of time filed by Defendants University of North Carolina, Board of Governors of the University of North Carolina, and W. Louis Bissette, Jr. (collectively, “UNC”). ECF No. 40. Regardless of how this Court disposes of UNC’s meritless motion to stay, it should deny UNC’s motion for extension of time to respond to Plaintiffs’ pending motion for a preliminary injunction and require UNC to file its response by the current deadline of **June 9, 2016**. Plaintiffs do not, however, oppose an extension of time for UNC to respond to Plaintiffs’ First Amended Complaint so long as that extension does not delay adjudication of the pending motion for a preliminary injunction.

The exigent nature of this case does not permit the excessive extension sought by UNC for the preliminary injunction briefing. Plaintiffs continue to suffer irreparable harm with each day that North Carolina House Bill 2 (“H.B. 2”) remains in effect. As detailed in Plaintiffs’ motion for preliminary injunction and the accompanying declarations of Plaintiffs and medical experts, those harms include daily threats to the health and safety of Plaintiffs and other transgender individuals, interference with medically necessary treatment, and irreversible violations of these individuals’ federal constitutional and statutory rights. Granting UNC’s request to extend its deadline to respond to the motion for a preliminary injunction until 30 days *after* briefing and adjudication of a motion to stay—a period of indeterminate length that could take weeks—in addition to the 21 days already afforded by default for opposing motions, would effectively deprive Plaintiffs of their rights to immediate relief in the interim.

While modest extensions to a deadline may sometimes be appropriate to allow a party sufficient time to prepare its brief, that is not the basis upon which UNC seeks an extension. Instead, UNC invokes an interest to “conserve their resources” in litigation. ECF No. 40 at 2. But that cannot conceivably outweigh the added harm to Plaintiffs caused by delay. Even in the unlikely event that UNC’s motion to stay were granted, the only “prejudice” UNC would have suffered is to have filed a brief opposing Plaintiffs’ motion for a preliminary injunction. But that is a brief that UNC would have to file in any event, after the stay it seeks has expired. Moreover, UNC’s motion to stay already raises arguments that go to the merits of the case—namely, its assertion that UNC has purportedly taken no action to follow H.B. 2, despite its issuance of a system-wide memorandum directing that all schools must require compliance with H.B. 2, and H.B. 2’s express mandate that all public agencies in the state “shall require” compliance with the statute’s provisions. N.C. Gen. Stat. § 143.760(b). Thus, fulfillment of UNC’s existing briefing obligation to respond to Plaintiffs’ preliminary injunction motion will require little effort beyond what UNC has already filed.

Although Plaintiffs will timely file a separate opposition to UNC’s motion to stay explaining the reasons that motion should be denied, even a cursory glance at the motion reveals that it lacks sufficient merit to support UNC’s bootstrapped extension request.¹ UNC wrongly asserts that a stay is warranted because of two other pending cases that

¹ It is important to note that UNC only seeks a stay of the proceedings as to UNC. Thus, this litigation will proceed against Defendant McCrory in any event, as well as any putative intervenor-defendant who may be permitted to participate in the litigation.

involve Title IX claims.² As to the primary case upon which UNC seeks a stay, the Fourth Circuit has now denied rehearing *en banc*. *G.G. v. Gloucester Cty. Sch. Bd.*, No. 15-2056, ECF No. 90 (4th Cir. May 31, 2016). Binding circuit precedent thus continues to confirm that Plaintiffs' Title IX rights are being violated. It would be bizarre to disregard that precedent by imposing the stay that UNC seeks and thereby permit clear Title IX violations to go unabated.

The other case upon which UNC relies, *U.S. v. North Carolina*, was filed *after* this case, and no motion for a preliminary injunction has been filed in that case. Perhaps more importantly, while the United States will represent the government's interests in that litigation, this case is the only one in which transgender individuals are represented as Plaintiffs. Thus, UNC's motion to stay effectively seeks to silence the voices of the individuals who are actually harmed by H.B. 2 and by UNC's compliance with the law, even though it is those individuals' harms that have given rise to this and related litigation in the first instance. Plaintiffs should not be sidelined from their own case, where the outcome will have a direct impact on their lives.

CONCLUSION

In sum, Plaintiffs oppose UNC's motion for an extension of time from the current deadline to respond to Plaintiffs' motion for a preliminary injunction (June 9, 2016). In

² Plaintiffs here have also asserted constitutional claims that are not replicated in those two other cases. Neither of Plaintiffs' due process claims has been asserted in the two cases upon which UNC relies. In addition, the *U.S. v. North Carolina* case does not raise any equal protection claims, No. 5:16-cv-425, ECF No. 2 (M.D.N.C.), and the Fourth Circuit did not reach the merits of the equal protection claim in *G.G. v. Gloucester Cty. Sch. Bd.*, -- F.3d --, 2016 WL 1567467, at *3 n.3 (4th Cir. 2016).

the event the Court rules upon UNC's motion for an extension of time after June 9, 2016, Plaintiffs respectfully request that the Court direct UNC to file its response within 5 calendar days of its order. Plaintiffs do not oppose UNC's request for an extension of time from its current deadline to respond to the First Amended Complaint (June 20, 2016) so long as that extension does not delay adjudication of the pending motion for a preliminary injunction.

Dated: June 1, 2016

Respectfully submitted,

/s/ Christopher A. Brook

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*Appearing by special appearance
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CERTIFICATE OF SERVICE

I, Christopher A. Brook, hereby certify that on June 1, 2016, I electronically filed Plaintiffs' Response to the Motion for Extension of Time Filed by Defendants University of North Carolina, Board of Governors of the University of North Carolina, and W. Louis Bissette, Jr. with the Clerk of the Court using the CM/ECF system, and have verified that such filing was sent electronically using the CM/ECF system to all parties.

/s/ Christopher A. Brook
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[PROPOSED] ORDER

Having reviewed the Motion for Extension of Time filed by Defendants University of North Carolina, Board of Governors of the University of North Carolina, and W. Louis Bissette, Jr. (collectively, “UNC”), ECF No. 40, and Plaintiffs’ Response to the Motion for Extension of Time, ECF No. 42, it is hereby ORDERED that the Motion is DENIED as to UNC’s request for an extension to respond Plaintiffs’ motion for a preliminary injunction and GRANTED as to UNC’s request for an extension to respond to Plaintiffs’ First Amended Complaint.

UNC shall file a response to Plaintiffs’ motion for a preliminary injunction by June 9, 2016, or five (5) calendar days from the date of this Order, whichever is later.

UNC shall respond to Plaintiffs’ First Amended Complaint within thirty (30) calendar days after disposition of UNC’s Motion to Stay, if the Motion to Stay is denied.

This extension of time shall not delay adjudication of Plaintiffs' pending motion for a preliminary injunction.

Dated: _____

Hon. Thomas D. Schroeder
United States District Judge