

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
STATE OF NORTH CAROLINA, et)
al.,)
)
Defendants,)
)
and) 1:16CV425
)
PHIL BERGER, in his official)
capacity as President Pro)
Tempore of the North Carolina)
Senate; and TIM MOORE, in his)
official capacity as Speaker)
of the North Carolina House of)
Representatives,)
)
Intervenor-Defendants.)

ORDER

Before the court is the joint motion of Defendants and Intervenor-Defendants for extension of time to respond to the United States' motion for preliminary injunction. (Doc. 97.) This case is one of four related actions involving constitutional and statutory challenges to portions of North Carolina's Public Facilities Privacy & Security Act, 2016 N.C. Sess. Laws 3, commonly known as House Bill 2, cases 1:16CV236, 1:16CV425, 1:16CV844, and 1:16CV845 (collectively, the "HB2 cases"). Briefing on the motion for preliminary injunction in case 1:16CV236 (the "236 case") is

complete, but responses to the United States' motion for preliminary injunction in this case are not due until July 29, 2016.

On July 14, 2016, the court entered an order to address this and other concerns. (Doc. 93.) The court set a hearing for August 1, 2016, on the motion for preliminary injunction in the 236 case and granted the United States' request to participate in that hearing. (Id. at 3.) In addition, in order to timely reach the issues raised by the United States' motion while avoiding multiple, piecemeal consideration of the overlapping and closely-related issues in these cases, the court deemed it appropriate to exercise its discretion pursuant to Federal Rule of Civil Procedure 65(a)(2) to advance the trial on the merits of all claims, defenses, and counterclaims in the United States' action. (Id. at 3-4); see also Fed. R. Civ. P. 65(a)(2); Citizens Concerned for Separation of Church and State v. City & Cty. of Denver, 628 F.2d 1289, 1298-99 (10th Cir. 1980); 11A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2950 (3d ed.); Singleton v. Anson Cty. Bd of Ed., 387 F.2d 349, 350 (4th Cir. 1967) (per curiam) (approving of the trial court's decision to avoid "piecemeal vindication of civil rights by way of preliminary injunction"). Consequently, the court directed the parties and United States Magistrate Judge to develop a schedule that permits

the HB2 cases to be tried in late October or early November 2016.
(Doc. 93 at 5.)

On July 22, 2016, the parties met with the United States Magistrate Judge to set a combined schedule for discovery in these cases. In light of the court's directive as well as the Defendants' and Intervenor-Defendants' request for discovery prior to a hearing on the motion for preliminary injunction, the parties have agreed to a combined hearing on the United States' motion for preliminary injunction and advanced trial on the merits to begin November 14, 2016. As a result, the United States will not suffer any undue prejudice from a modification of the briefing schedule on its preliminary injunction motion, and a modified briefing schedule would permit the parties to incorporate information gained during discovery into their preliminary injunction briefs.

In light of the foregoing,

IT IS THEREFORE ORDERED that the joint motion of Defendants and Intervenor-Defendants for extension (Doc. 97) is GRANTED and that Defendants and Intervenor-Defendants are hereby relieved of their obligation to file responses to the United States' motion for preliminary injunction by July 29, 2016. By July 29, 2016, the parties are directed to submit a proposal to the United States Magistrate Judge, jointly if possible and separately if they cannot reach agreement, regarding an appropriate briefing schedule for the United States' motion for preliminary injunction (Doc. 73) in

light of the fact that the court has advanced trial on the merits and the discovery and pre-trial briefing schedule.

/s/ Thomas D. Schroeder
United States District Judge

July 25, 2016