

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

NORTH CAROLINIANS FOR PRIVACY, an  
unincorporated nonprofit association;

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF  
JUSTICE; LORETTA E. LYNCH, in her  
official capacity as United States Attorney  
General; UNITED STATES DEPARTMENT  
OF EDUCATION; and JOHN B. KING, JR.,  
in his official capacity as United States Secretary  
of Education.

Defendants.

Case No. 1:16-CV-00845

PLAINTIFF NORTH  
CAROLINIANS FOR PRIVACY'S  
RULE 26(f) REPORT

---

1. *Meet-and-confer obligation.* Pursuant to Fed. R. Civ. P. 26(f) and L.R. 16.1(b), a telephonic conference was held on July 18 at 3:00 p.m. EST and was attended by James A. Campbell and J. Caleb Dalton for Plaintiff North Carolinians for Privacy (NCFP), and by Benjamin L. Berwick and Sheila Lieber for Defendants.

2. *Discovery and pretrial plan.* As NCFP will indicate in its Notice informing the Court whether the parties “can reach consensus to eliminate the overlapping claims of . . . North Carolinians for Privacy’s pending motion to intervene in the United States’ case (Doc. [58] in case 1:16CV425) and North Carolinians for Privacy’s separate declaratory judgment action in case 1:16CV845,” Order, *Carcano v. McCrory*, No. 16-cv-00236, at 5 (Doc. 86), NCFP proposes that the best way to streamline these cases and eliminate overlapping claims is to allow NCFP to intervene in *United States v. North Carolina* and to raise its counterclaims

and defenses in that action. If that happens, NCFP will voluntarily dismiss this lawsuit, and pursue its claims and defenses in the *United States* case. Defendants do not consent to this.

NCFP's involvement in the *United States* case is necessary to protect its and its members' rights because the United States bases its arguments in that case on facts submitted through expert and lay declarations that, if insufficiently rebutted, would undermine the claims and interests that NCFP asserts in this case. For example, the federal government has grounded its Title IX arguments on its assertion that an "understanding of the real-life meaning of the term 'sex,'" as purportedly recognized in the United States' expert declarations, shows that the word "sex" in Title IX includes "gender identity." *See* Mem. of Law in Support of Pl.'s Mot. for Preliminary Injunctive Relief at 24-25, *United States v. North Carolina*, No. 1:16-cv-00425 (Doc. No. 76). The United States has also supported its claims with declarations that try to undermine the privacy rights and safety concerns that NCFP raises. *See id.* at 44-51. Thus, the United States has put facts at issue and relied on declarations that directly bear on the legal questions that NCFP presents in this case. Consequently, NCFP's intervention is imperative to ensure that its members' rights are not jeopardized by the factual record created in the *United States* action.

If the Court accepts NCFP's request to intervene in the *United States* case (and, as a result, NCFP dismisses this case), NCFP will agree to be bound by the discovery and briefing schedule that the parties adopt in the *United States* case. Moreover, NCFP will coordinate its discovery and briefing with the defendants in that case to avoid overlap and to ensure that the case moves expeditiously.

Should the Court decline NCFP's request, NCFP proposes to the Court an expedited discovery and pretrial plan with the goal of completing discovery quickly and briefing cross-motions for summary judgment soon enough so that this case can be tried with the *United States* case (if a trial is necessary following resolution of the parties' cross-motions for summary judgment). The central disagreement between NCFP and Defendants on the proposed schedule is whether NCFP will have the opportunity to conduct discovery. Defendants would prefer to forgo a discovery period, while NCFP requests a short time for discovery. NCFP asserts that the need for discovery is evidenced by the many factual assertions that the United States has presented in its own action and that bear on the legal issues NCFP raises in this case. NCFP anticipates taking discovery on the United States' claims (mentioned above) (1) that an "understanding of the real-life meaning of the term 'sex,'" as purportedly recognized in the United States' expert declarations, shows that the word "sex" in Title IX includes "gender identity," *see* Mem. of Law in Support of Pl.'s Mot. for Preliminary Injunctive Relief at 24-25, *United States v. North Carolina*, No. 1:16-cv-00425 (Doc. No. 76), and (2) that the privacy rights and safety concerns raised by NCFP "do not justify" H.B. 2, *see id.* at 44-51.

Here is the discovery and pretrial plan that NCFP proposes:

- The parties will make all initial disclosures required under Fed. R. Civ. P. 26(a)(1) by Friday, August 5, 2016.
- The date for the completion of all discovery is Friday, September 23, 2016.

- Reports required by Rule 26(a)(2)(B) and disclosures required by Rule 26(a)(2)(C), if any, are due by Monday, August 15, 2016. Rebuttal expert reports are due by Friday, September 2, 2016.
- Supplementation under Rule 26(e) is due in a timely manner and in no case later than Friday, September 16, 2016.
- Dispositive motions, including cross-motions for summary judgment, shall be filed by Friday, September 30, 2016. Responses to dispositive motions shall be filed by Tuesday, October 18, 2016. And reply briefs shall be filed by Tuesday, October 25, 2016.
- NCFP has not selected a specific trial date or proposed schedule for final pretrial preparation. But if triable issues remain following resolution of the parties' cross-motions for summary judgment, NCFP agrees to the trial date and proposed schedule for final pretrial preparation—including the filing of trial briefs, motions in limine, joint stipulations of fact, and proposed findings of fact and conclusions of law—that the parties settle on in the *United States* case.

3. *Mediation.* NCFP notes that under L.R. 16.4(b) “[c]ases wherein the United States is a party . . . are not included within th[e] automatic selection for mediation.” In any event, NCFP does not think that mediation would be helpful in resolving this case.

4. *Other items.* NCFP proposes that the parties should be allowed until Monday, August 15, 2016, to join additional parties or amend pleadings. After this date, the Court will

consider, among other things, whether good cause exists to join additional parties or amend pleadings and whether joining additional parties or amending pleadings would delay trial.

NCFP does not agree to refer this case to a Magistrate Judge.

Respectfully submitted this 20th day of July, 2016.

/s/ James A. Campbell

Jeremy D. Tedesco, AZ 023497  
James A. Campbell, AZ 026737  
Kristen K. Waggoner, AZ 032382  
Joseph E. LaRue, AZ 031348  
Jonathan Caleb Dalton, AZ 030539  
ALLIANCE DEFENDING FREEDOM  
15100 N. 90<sup>th</sup> St.  
Scottsdale, Arizona 85260  
(480) 444-0020  
(480) 444-0028 Fax  
jtedesco@adflegal.org  
jcampbell@adflegal.org  
kwaggoner@adflegal.org  
jlarue@adflegal.org  
cdalton@adflegal.org

David A. Cortman, GA 188810  
J. Matthew Sharp, GA 607842  
ALLIANCE DEFENDING FREEDOM  
1000 Hurricane Shoals Road NE  
Suite D-1100  
Lawrenceville, Georgia 30043  
(770) 339-0774  
(770) 339-6744 Fax  
dcortman@adflegal.org  
msharp@adflegal.org

*Counsel for North Carolinians for Privacy*

/s/ Deborah J. Dewart

Deborah J. Dewart  
North Carolina Bar No. 30602  
LIBERTY, LIFE AND LAW FOUNDATION  
620 E. Sabiston Drive  
Swansboro, NC 28584-9674  
(910) 326-4554  
(877) 326-4585 Fax  
debcpalaw@earthlink.net  
Local Civil Rule 83.1 Counsel

## CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2016, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system, which will send notification of such filing to all CM/ECF participating attorneys.

/s/ James A. Campbell  
James A. Campbell