

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

JOAQUÍN CARCAÑO; PAYTON GREY
MCGARRY; H.S., by her next friend and mother,
KATHRYN SCHAFER; ANGELA GILMORE;
KELLY TRENT; BEVERLY NEWELL; and
AMERICAN CIVIL LIBERTIES UNION OF
NORTH CAROLINA,

*Plaintiffs/
Counter-Defendants,*

v.

PATRICK MCCRORY, in his official capacity as
Governor of North Carolina; UNIVERSITY OF
NORTH CAROLINA; BOARD OF GOVERNORS
OF THE UNIVERSITY OF NORTH CAROLINA;
and W. LOUIS BISSETTE, JR., in his official
capacity as Chairman of the Board of Governors of
the University of North Carolina,

Defendants,

and

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,

*Defendants-Intervenors/
Counter-Claimants.*

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

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION TO STRIKE OR, IN THE ALTERNATIVE,
TO DISMISS DEFENDANTS-INTERVENORS' COUNTERCLAIMS**

TABLE OF CONTENTS

NATURE OF THE MATTER..... 1

STATEMENT OF FACTS 2

QUESTIONS PRESENTED 3

ARGUMENT..... 3

I. DEFENDANTS-INTERVENORS’ COUNTERCLAIMS SHOULD BE STRICKEN OR DISMISSED AS DUPLICATIVE 4

II. DEFENDANTS-INTERVENORS LACK STANDING TO ASSERT THEIR COUNTERCLAIMS 9

 A. Defendants-Intervenors Have Not Demonstrated an Individual Injury or an Injury to the Legislature 10

 B. Defendants-Intervenors May Not Pursue Claims on the State’s Behalf 12

CONCLUSION 15

Plaintiffs/Counter-Defendants Joaquín Carcaño; Payton Grey McGarry; H.S., by her next friend and mother, Kathryn Schafer; Angela Gilmore; Kelly Trent; Beverly Newell; and American Civil Liberties Union of North Carolina (collectively, “Plaintiffs”), by and through their attorneys, hereby submit this Memorandum of Law in support of their motion pursuant to Rule 12(f), 12(b)(1), and 12(b)(6) of the Federal Rules of Civil Procedure to strike or, in the alternative, to dismiss each and every counterclaim asserted by Defendants-Intervenors/Counter Claimants 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 (collectively, “Defendants-Intervenors”).

NATURE OF THE MATTER

North Carolina’s recently enacted House Bill 2 (“H.B. 2”) subjects lesbian, gay, bisexual, and transgender (“LGBT”) North Carolinians to discrimination and denial of their civil rights in violation of the U.S. Constitution and federal law. H.B. 2 deprives transgender North Carolinians of dignity, safety, and equal access to public facilities; and it leaves LGBT North Carolinians subject to private prejudices in places where they live, work, or access necessary services, by stripping them of non-discrimination protections and depriving them of the ability to obtain such protections through local government enactments. Plaintiffs, LGBT North Carolinians, accordingly seek—in addition to appropriate injunctive relief—declaratory judgment that H.B. 2 violates the Equal

Protection and Due Process Clauses of the Fourteenth Amendment, as well as Title IX of the Education Amendments Act of 1972 (“Title IX”). *See* Doc. 9 ¶ 4.

STATEMENT OF FACTS

Plaintiffs initiated this action against Defendants Patrick McCrory, in his official capacity as Governor of North Carolina; the University of North Carolina; the Board of Governors of the University of North Carolina; and W. Louis Bissette, Jr., in his official capacity as Chairman of the Board of Governors of the University of North Carolina (collectively “Defendants”), alleging that H.B. 2 deprives them of equal access to government facilities in violation of the Equal Protection and Due Process Clauses of the Fourteenth Amendment and Title IX, and seeking declaratory and injunctive relief. Doc. 1; Doc. 9. Plaintiffs subsequently filed a motion to preliminarily enjoin Defendants from enforcing Part I of H.B. 2—the provision regarding access to multiple-occupancy facilities. Doc. 22.

Defendants-Intervenors—representatives of the North Carolina House and Senate—sought to intervene in this action, and this Court granted Defendants-Intervenors leave to intervene permissively under Rule 24(b) of the Federal Rules of Civil Procedure, without addressing the propriety of Defendants-Intervenors’ counterclaims or their standing to assert them. Doc. 44.¹

¹ In its order granting Defendants-Intervenors’ motion to intervene, this Court reserved judgment as to whether Defendants-Intervenors’ counterclaims—then presented in their proposed answer and counterclaims, *see* Doc. 36 at 46-48—should be stricken or dismissed as duplicative, noting that the Court would “consider any appropriate subsequent motions if and when they are presented,” Doc. 44 at 7-8.

Defendants-Intervenors' Answer to Plaintiffs' First Amended Complaint and Counterclaims asserts four counterclaims for declaratory judgment against Plaintiffs. Doc. 54 ¶¶ 143-51. Specifically, these counterclaims seek declaratory judgment that H.B. 2 is consistent with the Equal Protection and Due Process Clauses and Title IX. As set forth below, these counterclaims mirror the four claims that Plaintiffs asserted against Defendants in the First Amended Complaint.

QUESTIONS PRESENTED

1. Whether Defendants-Intervenors' counterclaims should be stricken or dismissed as duplicative, when they merely mirror Plaintiffs' requests for relief and would accordingly be mooted by the resolution of Plaintiffs' claims.

2. Whether Defendants-Intervenors' counterclaims should be dismissed for lack of Article III standing, when Defendants-Intervenors cannot assert an injury on their own behalf and are not the proper parties to assert these claims on the State's behalf.

ARGUMENT

Defendants-Intervenors' counterclaims are fatally infirm because they are declaratory judgment claims that merely mirror Plaintiffs' pre-existing claims for declaratory judgment and will be mooted by the resolution of Plaintiffs' claims. For that reason, they serve no purpose and should be stricken or dismissed. In any event, Defendants-Intervenors would require Article III standing in order to assert counterclaims of any kind, and they have none.

I. DEFENDANTS-INTERVENORS' COUNTERCLAIMS SHOULD BE STRICKEN OR DISMISSED AS DUPLICATIVE.

On their face, each of Defendants-Intervenors' counterclaims for declaratory judgment seek nothing more from Plaintiffs than a declaratory judgment precisely opposite to the declaratory judgment that Plaintiffs themselves seek in their First Amended Complaint. Intervenors have admitted that their counterclaims are "parallel" to Plaintiffs' claims and "require resolution of the same legal questions." Doc. 34 at 7. Such claims are needless duplicates of Plaintiffs' claims and therefore should be stricken or dismissed. Indeed, this concern with respect to duplication is heightened now that Defendants-Intervenors' own lawsuit against the United States—which raises overlapping issues with those here—has been transferred to this district. *See Berger v. U.S. Dep't of Justice*, No. 1:16-cv-00844 (M.D.N.C. transferred June 29, 2016).

Rule 12(f) of the Federal Rules of Civil Procedure, by its terms, empowers this Court to strike any "redundant" or "immaterial" matter from a pleading. As courts have recognized, such motions to strike "serve to expedite" the case—and to eliminate confusion—by "remov[ing] unnecessary clutter." *Heller Fin., Inc. v. Midwhey Powder Co.*, 883 F.2d 1286, 1294 (7th Cir. 1989). Such early judicial intervention is particularly warranted with respect to claims for declaratory judgment, which may be dismissed as soon as it can be determined that they "will serve no useful purpose." *Wilton v. Seven Falls Co.*, 515 U.S. 277, 282 (1995); *see also Volvo Constr. Equip. N. Am., Inc. v. CLM Equip. Co.*, 386 F.3d 581, 594 (4th Cir. 2004).

Longstanding authority establishes that courts should dismiss or strike a redundant counterclaim when “it is clear that there is a complete identity of factual and legal issues between the complaint and the counterclaim.” *Aldens, Inc. v. Packel*, 524 F.2d 38, 51-52 (3d Cir. 1975); 6 Charles Alan Wright & Arthur R. Miller, *Fed. Prac. and Proc.* § 1406 (3d ed. 2016) (dismissal of counterclaims is appropriate where “there is no doubt that [the claims] will be rendered moot by the adjudication of the main action”). And numerous district courts have applied that rule to strike or dismiss counterclaims “when the counterclaim restates the issues that are already before the court by virtue of the complaint”—that is, when it merely seeks the “opposite relief” sought in the complaint. *Cincinnati Specialty, Underwriters Ins. Co. v. DMH Holdings, LLC*, No. 3:11-cv-357, 2013 WL 683493, at *4 (N.D. Ind. Feb. 22, 2013) (striking declaratory judgment counterclaim); *see, e.g., Monster Daddy LLC v. Monster Cable Products, Inc.*, No. 6:10-1170, 2010 WL 4853661, at *6 (D.S.C. Nov. 23, 2010) (declining to entertain declaratory judgment counterclaims); *Pettrey v. Enter. Title Agency, Inc.*, No. 1:05-cv-1504, 2006 WL 3342633, at *3 (N.D. Ohio Nov. 17, 2006) (dismissing counterclaim); *United States v. Zanfei*, 353 F. Supp. 2d 962, 965 (N.D. Ill. 2005) (striking as declaratory judgment counterclaim as “repetitious and unnecessary”).

As Defendants-Intervenors themselves acknowledge, *see* Doc. 34 at 7, each of their counterclaims mirrors Plaintiffs’ claims in this action; indeed, by the language of the counterclaims themselves, the counterclaims seek nothing more than to establish that Plaintiffs’ claims are “wrong as a matter of law,” Doc. 54 ¶¶ 143-44, 146, 148, 150.

- Count I of Plaintiffs’ Amended Complaint alleges that each part of H.B. 2 discriminates against LGBT individuals in violation Equal Protection Clause of the Fourteenth Amendment, and seeks declaratory judgment on that basis. Doc. 9 ¶¶ 183-219. Defendants-Intervenors’ first counterclaim asks for declaratory judgment that “the [Plaintiffs’] argument that the Act’s public facility provisions violate the Equal Protection Clause of the Fourteenth Amendment, both facially and as applied, is wrong as a matter of law” (and identical relief with respect to “the Act’s preemption provision”). Doc. 54 ¶¶ 143-45.
- Count II of Plaintiffs’ Amended Complaint alleges that Part I of H.B. 2 violates the right to privacy protected by the Due Process Clause of the Fourteenth Amendment, and seeks declaratory judgment on that basis. Doc. 9 ¶¶ 220-26. Defendants-Intervenor’s second counterclaim asks for declaratory judgment that “the [Plaintiffs’] argument that the Act violates the right to privacy protected by the Due Process Clause of the Fourteenth Amendment . . . is wrong as a matter of law.” Doc. 54 ¶¶ 146-47.
- Count III of Plaintiffs’ Amended Complaint alleges that Part I of H.B. 2 violates the right to be free from unwanted medical treatment protected by the Due Process Clause of the Fourteenth Amendment, and seeks declaratory judgment on that basis. Doc. 9 ¶¶ 227-34. Defendants-Intervenor’s third counterclaims asks for declaratory judgment that “the [Plaintiffs’] argument that the Act violates the right to be free from unwanted medical treatment protected by the Due Process Clause of the Fourteenth

Amendment, both facially and as applied, is wrong as a matter of law.” Doc. 54

¶¶ 148-49.

- Count IV of Plaintiffs’ Amended Complaint alleges that Part I of H.B. 2 violates Title IX, and seeks declaratory judgment on that basis. Doc. 9 ¶¶ 235-43. Defendants-Intervenors’ fourth counterclaim asks for declaratory judgment that “the Act violates Title IX, both facially and as applied, is wrong as a matter of both law and proper procedure,” or that, in the alternative, “under the [Plaintiffs’] interpretation, Title IX violates the federal Constitution.” Doc. 54 ¶¶ 150-51.

Each of Defendants’ claims is a mirror image of the claims for declaratory judgment in Plaintiffs’ Amended Complaint.

In their prior briefing on this issue, Defendants-Intervenors made much of the fact that their fourth counterclaim additionally seeks declaratory judgment as to certain affirmative defenses. *See* Doc. 43 at 8 (trumpeting Defendants-Intervenors’ claim that Plaintiffs’ interpretation of Title IX “violates the federal Constitution”). But that does not save Defendants-Intervenors’ counterclaim. If anything, it highlights its infirmity, by establishing it as *doubly* duplicative—that is, susceptible to being struck or dismissed as duplicative of both the original claim *and* the affirmative defense.² *See Malibu Media, LLC v. Doe I*, No. 12-1198, 2012 WL 6681990, at *3-4 (D. Md. Dec. 21, 2012) (striking

² Defendants-Intervenors cannot dispute, as a factual matter, that this request for declaratory judgment is identical to its affirmative defenses. *Compare* Doc. 54 ¶¶ 127-30 (affirmative defense that “Title IX cannot constitutionally be construed in the manner the [Plaintiffs] contend[.]”) *with id.* ¶¶ 150-51 (seeking declaratory judgment that “under the [Plaintiffs’] interpretation, Title IX violates the federal Constitution”).

party's declaratory judgment counterclaims that duplicated its affirmative defenses); *Penn Mut. Life Ins. Co. v. GreatBanc Trust Co.*, No. 09-cv-6129, 2010 WL 2928054, at *5 (N.D. Ill. July 21, 2010) (“Counterclaims that mimic affirmative defenses are no less duplicative of counterclaims that mirror the plaintiff's request for declaratory relief.”) In any event, the distinction that Defendants-Intervenors attempt to draw between affirmative defenses and the underlying claim is nonsensical: a plaintiff whose claim for declaratory judgment is barred by an affirmative defense is no more entitled to that relief than a plaintiff who has not met the threshold requirements for relief—in both instances, it is unavailable as a matter of law. *See Tenneco Inc. v. Saxony Bar & Tube, Inc.*, 776 F.2d 1375, 1379 (7th Cir. 1985) (noting that counterclaims were just as redundant when they asserted that the plaintiff lacked jurisdiction, and that the key inquiry is whether the complaint “puts in play all of the factual and legal theories” relevant to resolving the relevant counterclaim).³

And contrary to Defendants-Intervenors' prior assertions, Doc. 43 at 8, the potential that Plaintiffs might voluntarily dismiss their claims is also insufficient to justify their counterclaims. Rule 41(a) of the Federal Rules of Civil Procedure adequately protects Defendants-Intervenors from such a result by permitting them an opportunity to be heard. *See Pettrey*, 2006 WL 3342633, at *3 (“In the past, mirror-image declaratory

³ To the extent that Defendants seek declaratory judgment as to the constitutional validity of Title IX in the hypothetical situation that Plaintiffs' claims were held to have been otherwise barred (and the controversy mooted), the issue would be moot, and Defendants-Intervenors would have no interest in asserting such counterclaims.

judgment counterclaims served the purpose of preventing tactical dismissals by plaintiffs. However, in light of the protections of current Rule 41(a) this is less likely to occur, so long as the plaintiffs' claims and the defendants' counterclaims are truly identical."); 6 *Fed. Prac. & Proc.* § 1406 (discussing the protections in Rule 41 as supporting the dismissal of mirrored counterclaims when the identity of counterclaims may be resolved as a legal matter). In any event, unless Defendants-Intervenors' claims are dismissed with prejudice (as there is adequate basis for them to be should this Court address standing, *see infra* Section II), they may be reasserted should such an unlikely scenario arise. The speculative possibility of such an event, however, is no reason to permit such claims at present.

II. DEFENDANTS-INTERVENORS LACK STANDING TO ASSERT THEIR COUNTERCLAIMS.

To the extent that Defendants-Intervenors' counterclaims are not struck or dismissed as entirely duplicative of Plaintiffs' claims, then dismissal with prejudice is appropriate for an independent reason: Defendants-Intervenors lack standing to assert these claims, thus depriving this Court of the power to adjudicate them. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992); Fed R. Civ. P. 12(b)(1). Defendants-Intervenors argued in their reply brief supporting intervention that an interest sufficient to support permissive intervention need not be sufficient to establish Article III standing. Doc. 43 at 3. But Article III standing is certainly required in order for a defendant-intervenor to assert a counterclaim affirmatively asking the Court to award relief.

In order to have the necessary Article III standing to assert their counterclaims, Defendants-Intervenors must establish that they have suffered (or imminently will suffer) an “injury in fact” that is “concrete and particularized.” *Doe v. Obama*, 631 F.3d 157, 160 (4th Cir. 2011). But whether in their individual capacity or in their official capacity as representatives of the General Assembly, Defendants-Intervenors lack the concrete and particularized injury required to satisfy Article III standing. Further, Defendants-Intervenors have no claim under federal or state law to represent the State in this action.

A. Defendants-Intervenors Have Not Demonstrated an Individual Injury or an Injury to the Legislature.

Defendants-Intervenors have not—and almost certainly cannot—articulate any concrete, particularized injury that would permit them to vindicate H.B. 2 as individuals. Individual legislators, like any other litigant, are prevented from raising a generalized defense of a challenged law—even if they voted for or proposed the enactment at issue. *See Planned Parenthood of Mid-Missouri & E. Kansas, Inc. v. Ehlmann*, 137 F.3d 573, 577-78 (8th Cir. 1998); *cf. Hollingsworth v. Perry*, 133 S. Ct. 2652, 2662-63 (2013) (official proponents of a ballot initiative lacked standing to vindicate the challenged act because the litigants had not been “ordered . . . to do or refrain from doing anything” and “[t]heir only interest in [the case] was to vindicate the constitutional validity of a generally applicable [state] law”). To merit standing, legislators—like any other individual—must allege a “personal stake” in the suit and a “particularized” injury. *Raines v. Byrd*, 521 U.S. 811, 819 (1997).

Defendants-Intervenors fare no better in their official capacities as representatives of the North Carolina legislature. In asserting some interest of the legislature in having its law upheld in the courts, they assert only the type of “wholly abstract and widely dispersed” institutional injury that is insufficient to support standing. *Raines*, 521 U.S. at 829. While *Raines* recognized an exceedingly narrow exception from prior case law, that legislators *as a bloc* might have standing if their votes were “completely nullified,” in the sense that they were not even counted, *id.* at 823 (quoting *Coleman v. Miller*, 307 U.S. 433, 466 (1939)), that exception does not come close to applying here.⁴ Plaintiffs’ suit does not threaten the legislature’s functioning as a whole, threaten them with any loss of rights, or impose restraints on their behavior.

Defendants-Intervenors’ pleadings suggest only two plausible claims that the legislature itself has been injured as an institution. First, they note that legislature “w[ill] be directly subject to the [Plaintiffs’] proposed legal requirements under the Fourteenth Amendment” if Plaintiffs prevail in this case. Doc. 54 ¶ 10. But it can hardly constitute a redressable injury for a state legislature to be subjected to the requirements of the Fourteenth Amendment as interpreted by a court. Alternatively, Defendants-Intervenors claim that, if the Legislature permits individuals to use restrooms and other facilities consistent with their gender identity, the Legislature could later be “force[d] . . . to authorize funding to retrofit countless public buildings.” Doc. 54 ¶ 140. But such

⁴ Indeed, the Supreme Court expressed some doubt that the exception in *Coleman* would even apply to a case initiated in federal court. *Id.* at 824 n.8.

attenuated, speculative possibilities are insufficient to establish standing, *see Doe*, 631 F.3d at 160, and Defendants-Intervenors offer no support for the proposition that the theoretical future need to fund a program is a legitimate basis for a *legislature* to intervene. (By that theory, each taxpayer might equally have standing as the individuals who would be ultimately forced to bear such hypothetical costs.)

B. Defendants-Intervenors May Not Pursue Claims on the State’s Behalf.

Defendants-Intervenors also have asserted that they possess standing as agents of the State of North Carolina. Doc. 43 at 3. This argument fails entirely, because the Governor is both the appropriate party to undertake the State’s defense and—as a factual matter—has vigorously applied himself to that task.

A party is not automatically cloaked in Article III standing merely because it claims to represent the state, or it might have some authorization to do so in different circumstances. *See Hollingsworth v. Perry*, 133 S. Ct. 2652, 2666 (2013) (noting that “a legislator authorized by state law to represent the State’s interest *may* satisfy standing requirements” (emphasis added)). Rather, an official may defend a law in lieu of the public officials charged with doing so *only* when the state’s interest would otherwise be left unrepresented. *See I.N.S. v. Chadha*, 462 U.S. 919, 940 (1983) (Congress may defend a statute “when an agency of government, as a defendant charged with enforcing the statute, agrees with plaintiffs that the statute is inapplicable or unconstitutional”); *Karcher v. May*, 484 U.S. 72, 80 (1987) (“The Legislature was permitted to intervene

because it was responsible for enacting the statute and because no other party defendant was willing to defend the statute”) (internal citation omitted).

Here, as a matter of law and fact, there is another party that is empowered to represent the State’s interests and is doing so: Governor McCrory. When the Attorney General declines to defend a challenged law, North Carolina law clearly assigns the authority to defend state enactments to the Governor, who is specifically authorized to hire counsel and represent the interests of the State. N. C. Const. art. III, § 1; N.C. Gen. Stat. § 147-17(a), (b). Defendants-Intervenors offer nothing to support their suggestion that this authority would somehow devolve to the legislature. For example, the statute on which Defendants-Intervenors previously relied for intervention, N.C. Gen. Stat. § 1-72.2, only confers on them authority “to intervene” for the General Assembly—not to initiate and pursue claims against private citizens with the imprimatur of the State.

And as a factual matter, there can be no contesting that the Governor has vigorously pursued this defense in this and other actions. In this action alone, he has filed an answer to Plaintiffs’ First Amended Complaint that denies Plaintiffs’ allegations and asserts affirmative defenses to them, *see* Doc. 51, and filed a full-throated opposition to Plaintiffs’ request for a preliminary injunction, *see* Doc. 55. Further, the Governor has defended the State against a similar lawsuit by the U.S. government, *see United States v. North Carolina*, 1:16-cv-00425 (M.D.N.C. filed May 9, 2016), and even instituted his own action to protect the State’s interests, *see McCrory v. United States*, 1:16-cv-00238 (E.D.N.C. filed May 9, 2016).

In an analogous case, the D.C. Circuit held that agents of the Alaska legislature lacked standing to assert the State's interests when the Governor was already defending the law, holding that the alleged harm was to the *State's* interest, and not to the legislature. *Alaska Legislative Council v. Babbitt*, 181 F.3d 1333, 1338-39 (D.C. Cir. 1999) (“The Legislature is not authorized to sue on behalf of the State—the Governor holds that power—and the Legislature suffers no separate, identifiable, judicially cognizable injury that entitles it to sue on its own behalf.”) (internal citations omitted)).

In prior briefing, Defendants-Intervenors asserted two grounds to justify their engagement in this action in lieu of the Governor. Neither is persuasive. First, Defendants-Intervenors assert that the Governor's ability to defend this lawsuit is limited, because he has “authority over only limited segments of the state entities and instrumentalities that would be affected by an adverse decision.” Doc. 34 at 1. But this conflates the governor's *supervisory* abilities as governor with his *specific duty* to defend actions when the Attorney General will not. The duty and ability of the Governor to defend North Carolina's laws is not limited to situations in which he otherwise supervises the affected instrumentalities. *See* N.C. Gen. Stat. § 147-17(a), (b) (permitting the governor to direct defense in lieu of Attorney General “for all departments, officers, agencies, institutions, commissions, bureaus or other organized activities of the State which receive support in whole or in part from the State”). This leaves no substance to Defendants-Intervenors' argument.

Second, Defendants-Intervenors assert that Governor McCrory “is not named in the Title IX counts” and therefore may lack standing to defend H.B. 2 against those challenges. Doc. 34 at 2; Doc. 43 at 4. Here again, Defendants-Intervenors imagine a limitation on the Governor’s ability to defend the state—one not present in state law. Under the relevant statute, the Governor would have standing to defend a state law from attack no matter *which* state instrumentality was involved (or even in the event that a non-state entity was involved), in the same way that the Attorney General would after receiving notice that a state enactment had been challenged as unconstitutional. *See* N.C. Gen. Stat. § 147-17(a), (b) (Governor’s authority to act on Attorney General’s behalf encompasses “any other matter in which the State of North Carolina is interested”). In any event, UNC itself is asserting specific defenses in this action, *see* Doc. 38 (motion to stay); Doc. 50 (UNC opposition to preliminary injunction), and Defendants-Intervenors offer no authority to suggest that they are acting *ultra vires* in doing so.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court strike or, in the alternative, dismiss each of Defendants-Intervenors’ counterclaims.⁵

⁵ Because of the underlying procedural infirmity in Defendants-Intervenors’ counterclaims, Plaintiffs do not in this motion seek a ruling on the merits of these claims—*i.e.*, whether H.B. 2 can withstand constitutional scrutiny or conflicts with Title IX—which issues are, in any event, joined in their Motion for Preliminary Injunction, Doc. 21, as they apply to Part I of H.B. 2, and which, if necessary, may be the subject of future dispositive motions. *See* Fed. R. Civ. P. 12(c), 56(a).

Dated: July 6, 2016

Respectfully submitted,

/s/ Christopher A. Brook

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CERTIFICATE OF SERVICE

I, Christopher A. Brook, hereby certify that on July 6, 2016, I electronically filed the foregoing MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO STRIKE OR, IN THE ALTERNATIVE, TO DISMISS DEFENDANTS-INTERVENORS' COUNTERCLAIMS 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 who have appeared with an email address of record.

/s/ Christopher A. Brook
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