

**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DOCKETING STATEMENT--CIVIL/AGENCY CASES**

Directions: Counsel must make a **docketing statement (civil/agency) filed** entry in CM/ECF within 14 days of docketing of the appeal, or within the due date set by the clerk's docketing notice, whichever is later. File with the entry the (1) docketing statement form with any extended answers and (2) any transcript order form. Parties proceeding pro se are not required to file a docketing statement. Opposing counsel who finds a docketing statement inaccurate or incomplete may file any objections within 10 days of service of the docketing statement using the ECF event-**docketing statement objection/correction filed**.

Appeal No. & Caption	16-1989, Carcaño v. McCrory
Originating No. & Caption	1:16-cv-00236-TDS-JEP, Carcaño v. McCrory
Originating Court/Agency	U.S. District Court, Middle District of North Carolina

Jurisdiction (answer any that apply)	
Statute establishing jurisdiction in Court of Appeals	28 U.S.C. § 1292(a)(1)
Time allowed for filing in Court of Appeals	30 days (Fed. R. App. P. 4)
Date of entry of order or judgment appealed	August 26, 2016
Date notice of appeal or petition for review filed	August 29, 2016
If cross appeal, date first appeal filed	N/A
Date of filing any post-judgment motion	N/A
Date order entered disposing of any post-judgment motion	N/A
Date of filing any motion to extend appeal period	N/A
Time for filing appeal extended to	N/A
Is appeal from final judgment or order?	<input type="radio"/> Yes <input checked="" type="radio"/> No
If appeal is not from final judgment, why is order appealable? Order denies a preliminary injunction and/or has the effect of doing so. 28 U.S.C. § 1292(a)(1); see Carson v. Am. Brands, Inc., 450 U.S. 79, 84 (1981).	

Settlement (The docketing statement is used by the circuit mediator in pre-briefing review and mediation conducted under Local Rule 33. Counsel may make a confidential request for mediation by calling the Office of the Circuit Mediator at 843-521-4022.)	
Is settlement being discussed?	<input type="radio"/> Yes <input checked="" type="radio"/> No

Transcript (transcript order must be attached if transcript is needed and not yet on file)		
Is transcript needed for this appeal?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Has transcript been filed in district court?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Is transcript order attached?	<input type="radio"/> Yes	<input checked="" type="radio"/> No

Case Handling Requirements (answer any that apply)		
Case number of any prior appeal in same case	N/A	
Case number of any pending appeal in same case	N/A	
Identification of any case pending in this Court or Supreme Court raising similar issue	4th Cir. 16-01733; Sup. Ct. 16-273	
	If abeyance or consolidation is warranted, counsel must file an appropriate motion.	
Is expedited disposition necessary?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
	If yes, motion to expedite must be filed.	
Is oral argument necessary?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Does case involve question of first impression?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Does appeal challenge constitutionality of federal or state statute in case to which federal or state government is not a party	<input type="radio"/> Yes	<input checked="" type="radio"/> No
	If yes, notice re: challenge to constitutionality of law must be filed.	

Nature of Case (Nature of case and disposition below. Attach additional page if necessary.)
See attached.

Issues (Non-binding statement of issues on appeal. Attach additional page if necessary)

Whether the district court erred in holding that Appellants were not entitled to a preliminary injunction based on the unconstitutionality of Part I of North Carolina House Bill 2 -- which mandates that North Carolina public agencies require that restrooms and other multiple-user, single sex facilities be used only by individuals whose biological sex," as determined by the sex listed on the individual's birth certificate, matches the sex designated for the facility.

Adverse Parties (List adverse parties to this appeal and their attorneys; provide party's address if the party is not represented by counsel. Attach additional page if necessary.)

Adverse Party:

See attached.

Attorney:

Address:

E-mail:

Phone:

Adverse Party:

Attorney:

Address:

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Adverse Parties (continued)

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Appellant (Attach additional page if necessary.)

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See attached.

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Name:

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Address:

E-mail:

Phone:

Appellant (continued)

Name:

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Name:

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Signature: /s/ Paul M. Smith **Date:** 09/07/2016

Counsel for: Plaintiffs-Appellants Carcaño, McGarry, H.S., and ACLU of NC

Certificate of Service: I certify that on 09/07/2016 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below (Attach additional page if necessary):

See attached service list.

Signature: /s/ Paul M. Smith

Date: 09/07/2016

Nature of the Case

Plaintiffs-Appellants (“Plaintiffs”) are three transgender North Carolinians, as well as an association that includes transgender individuals as members and that advocates for the civil rights of transgender North Carolinians, who together brought this action challenging North Carolina’s House Bill 2 as conflicting with Title IX of the Education Amendments Act of 1972 and the Equal Protection and Due Process Clauses of the Fourteenth Amendment. (First Amended Complaint; *see* Dist. Ct. ECF No. 9.)

Plaintiffs moved before the district court to preliminarily enjoin Defendants-Appellees (“Defendants”) from enforcing Part I of House Bill 2, which mandates that North Carolina public agencies require that restrooms and other multiple-user, single sex facilities be used only by individuals whose biological sex,” as determined by the sex listed on the individual’s birth certificate, matches the sex designated for the facility. (Dist. Ct. ECF No. 21.)

On August 26, 2016, the district court denied Appellants’ motion on their constitutional claims, thus leaving in place House Bill 2’s discriminatory mandate as it applies to (1) public facilities other than those in the control of the University of North Carolina, and (2) as to the University of North Carolina, individuals other than the three individual Plaintiffs. (Dist. Ct. ECF No. 127.) Plaintiffs appeal from this denial.

As to these constitutional claims, Defendants, sued in their official capacities, are public officials acting under color of state law, who are charged with the enforcement of, and have enforced, House Bill 2. (First Amended Complaint; *see* Dist. Ct. ECF No. 9.)

* * *

Plaintiffs note that 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, were granted leave to intervene permissively before the district court as Intervenor-Defendants. (Dist. Ct. ECF No. 44.)

List of Adverse Parties and Counsel:

(1) Defendant-Appellee Patrick McCrory, in his official capacity as Governor of North Carolina

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(2) Defendant-Appellee Board of Governors of the University of North Carolina

(3) Defendant-Appellee W. Louis Bissette, Jr., in his official capacity as Chairman of the Board of Governors of the University of North Carolina

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Plaintiffs-Appellants:

- (1) Joaquín Carcaño**
- (2) Payton Grey McGarry**
- (3) H.S., by her next friend and mother, Kathryn Schafer**
- (4) American Civil Liberties Union of North Carolina**

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Additional Interested Parties:

(1) Intervenor-Defendant Phil Berger, in his official capacity as President *pro tempore* of the North Carolina Senate

(2) Intervenor-Defendant Tim Moore, in his official capacity as Speaker of the North Carolina House of Representatives

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