

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

JOAQUIN CARCAÑO, et al.,

Plaintiffs,

v.

PATRICK McCRORY, in his official  
capacity as Governor of North Carolina, et al.,

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,

Intervenor-Defendants.

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UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NORTH CAROLINA, et al.,

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,

Intervenor-Defendants.

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1:16CV236

1:16CV425

## ORDER

This matter came before the Court on September 30, 2016, for a Status Conference in cases 1:16CV236 and 1:16CV425, which have been coordinated for discovery and scheduling purposes. At the Status Conference, which was conducted by telephone, Attorney Scott Wilkens spoke on behalf of the Plaintiffs in 1:16CV236 (the “ACLU Plaintiffs”), and Attorney Corey Stoughton of the United States Department of Justice spoke on behalf of Plaintiff United States in 1:16CV425 (the “USDOJ Plaintiff”). For Defendants, Attorney Bill Stewart spoke on behalf of the State of North Carolina, Governor McCrory, and the North Carolina Department of Public Safety (the “State Defendants”); Attorney Kyle Duncan spoke on behalf of Intervenor-Defendants Phil Berger and Tim Moore (the “Legislative Intervenors”); and Attorney John Gore spoke on behalf of the University of North Carolina and the UNC Board of Governors and Chairman Bissette (the “UNC Defendants”). Prior to the hearing, the Parties filed a Joint Notice [Doc. #155 in 1:16CV236 and Doc. #190 in 1:16CV425] notifying the Court that they had not yet agreed upon limits as to the total number and length of depositions. In addition, the USDOJ Plaintiff expressed concern over complying with the October 4, 2016 deadline for filing a Motion for a Protective Order regarding its witnesses’ medical records. The Court enters this written order to memorialize the Parties’ positions and the Court’s rulings at the Status Conference.

### **I. Issues Related to Deposition Limits**

At the September 16, 2016 telephone Status Conference, the Parties informed the Court that they were in the process of discussing limits as to the number of depositions needed by each side, as well as fact stipulations and other voluntary limitations that would likely affect

the number and length of needed depositions. In response, the Court allowed the Parties additional time to meet and confer, setting the issue for further resolution at the September 30, 2016 conference. In their Joint Notice and at the September 30 Status Conference, the Parties indicated that they still had not resolved certain issues with respect to deposition limits. At the Status Conference, the Court heard from each Party, but none were in a position to propose limits as to the total number of depositions allowed to each side. After discussing possible limits and methods for determining the number of depositions that each side would require, the Court instructed the Parties to meet and confer and to submit final proposals by the end of the day. To the extent that the Parties raised disagreements regarding potential time limits for depositions, the Court concluded that the time limit for each deposition would be seven hours, as provided by Federal Rule of Civil Procedure 30(d)(1). To the extent that a party wishes to further limit the time of a fact witness deposition, such limitation may be agreed by stipulation of all Parties. If no agreement can be reached, the Party seeking the time limitation may file a Motion for a Protective Order with the Court for more specific consideration.

Following the hearing, as directed by the Court, the Parties submitted a Joint Proposal Regarding Deposition Limits [Doc. #157 in 1:16CV236 and Doc. #195 in 1:16CV425]. This proposal suggests a total limit of 70 depositions, as specifically set out in the Joint Proposal. The Court approves of these proposed limits, adopts the Joint Proposal Regarding Deposition Limits in full, and hereby incorporates the Joint Proposal into the most recent Scheduling Order entered in this case [Doc. #147 in 1:16CV236 and Doc. #178 in 1:16CV425].

## **II. Issues Related to the Discovery of Witnesses' Medical Records**

The Court previously set this case for a Hearing and Status Conference for October 28, 2016, to address anticipated discovery issues related to legislative privilege and Plaintiffs' or other witnesses' medical records. The Court previously directed that if the Parties were not able to agree on the extent to which Plaintiffs' or Plaintiffs' witnesses' medical information was discoverable by Defendants, Plaintiffs were to file a Motion for a Protective Order by October 4, 2016. At the September 30 Status Conference, the USDOJ Plaintiff expressed concern over complying with the October 4, 2016 deadline for filing a Motion for a Protective Order, arguing that they had received subpoenas for those records later than expected.

The Court proposed rescheduling the October 28, 2016 Hearing and Status Conference on medical records and legislative privilege to November 18, 2016 at 1 p.m., and adjusting the briefing schedule regarding the discoverability of medical records accordingly. All Parties agreed to this proposal. The Court therefore adopted the following briefing schedule with the consent of all Parties: all subpoenas and requests for documents relating to Plaintiffs' and Plaintiffs' witnesses' medical records shall be served by October 4, 2016. On or before October 7, 2016, the Plaintiffs shall make counter-proposals regarding the scope of the requested medical information. The Parties are then directed to meet and confer to attempt to narrow any disputes existing at that time, and to the extent that the Parties are not able to agree as to the scope of requested medical information, Plaintiffs shall file a Motion for a Protective Order on or before October 18, 2016. The State and Intervenor-Defendants shall file their response to this motion on or before November 1, 2016. Following these responses, the Parties are directed to meet and confer in an attempt to further narrow any disputes. The

Plaintiffs' replies shall then be due on or before November 14, 2016. The briefing schedule for issues surrounding legislative immunity remains unchanged from that which was previously ordered by the Court [Doc. #147 in 1:16CV236 and Doc. #178 in 1:16CV425].

### **III. Conclusion**

IT IS THEREFORE ORDERED that the Court adopts the Parties' Joint Proposal Regarding Deposition Limits [Doc. #157 in 1:16CV236 and Doc. #195 in 1:16CV425] in full, and the most recent Scheduling Order [Doc. #147 in 1:16CV236 and Doc. #178 in 1:16CV425] is modified accordingly. Any other time limits for particular depositions may be stipulated by the Parties or requested in a separate Motion for a Protective Order.

IT IS FURTHER ORDERED that the Hearing and Status Conference previously set for October 28, 2016 shall be rescheduled for November 18, 2016, at 1 p.m. The Parties are instructed to follow the briefing schedule set out above for any discovery disputes surrounding Plaintiffs' or Plaintiffs' witnesses' medical records, and the most recent Scheduling Order [Doc. #147 in 1:16CV236 and Doc. #178 in 1:16CV425] is modified accordingly.

This, the 11<sup>th</sup> day of October, 2016.

          /s/ Joi Elizabeth Peake            
United States Magistrate Judge