

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

JOAQUÍN CARCAÑO et al.,)
)
Plaintiffs,)
)
vs.) CASE NO. 1:16-CV-00236-TDS-JEP
)
PATRICK MCCRORY, in his official)
capacity as Governor of North Carolina, et al.,)
)
Defendants.)

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) CASE NO. 1:16-CV-00425-TDS-JEP
)
STATE OF NORTH CAROLINA et al.,)
)
Defendants.)

**STATE DEFENDANTS AND INTERVENOR-DEFENDANTS’
STATEMENT OF POSITION PURSUANT
TO ORDER OF NOVEMBER 15, 2016**

Pursuant to this Court’s Order of November 15, 2016, defendants Governor Patrick L. McCrory, the State of North Carolina, and the North Carolina Department of Public Safety along with intervenor-defendants President *Pro Tempore* Phil Berger and Speaker Tim Moore (collectively, “defendants”) hereby provide the following statement regarding their position:

1. As previously outlined in defendants’ filing of August 12, 2016, *USA Doc.* 129, defendants believe that the proper approach in the 425 case in light of the Supreme Court granting certiorari in *Gloucester County School Board v. G.G.*, 822 F.3d 709 (4th

Cir. 2016), *stay granted*, 136 S. Ct. 2442 (2016), *cert. granted in part*, No. 16-273, 2016 WL 4565643 (Oct. 28, 2016) (“*G.G.*”), is to do two things:

- Stay these proceedings altogether, or—at a minimum—stay the trial and all discovery (both written discovery and depositions) until after the Supreme Court has decided *G.G.*; and
- Hear and deny the United States’ motion for preliminary injunction on the briefs already submitted, without prejudice to it being asserted again depending on the outcome of *G.G.*¹

Defendants submit that *G.G.* lies at the core of the United States’ case, not just its Title IX claim. The United States’ Title VII claim, for example, relies extensively on *G.G.* In its motion, the United States urges that it would be “incongruous” to interpret Title VII differently from *G.G.*’s view of Title IX; that the *G.G.* concurrence should control interpretation of Title VII cases; and that *G.G.* dictates “an informed understanding of the real-life meaning of the term ‘sex.’” *USA Doc. 76* at 17-20, 24, 26. While portions of these claims might go beyond *G.G.*, this Court’s eventual disposition of those claims will look quite different depending on the Supreme Court’s opinion. At a minimum, the Supreme Court’s decision may open the possibility of resolving certain of the remaining claims through dispositive motions. Therefore, following the *G.G.* decision all parties should have a reasonable period (for instance, 30-45 days) before discovery, if any, recommences within which to file dispositive motions. When the Court resolves the parties’ dispositive motions and potentially narrows the issues for trial, the

¹ If this Court proceeds to issue a preliminary injunction at this time, defendants contend that it should be stayed pending the final decision in *G.G.*

parties would then agree to a reasonable pre-trial schedule consisting of written discovery, depositions, and pre-trial motions.

2. With regard to the 236 case, the motion for preliminary injunction by the *Carcaño* plaintiffs as to their due process claims has been briefed in this Court by all parties. Defendants take no position as to whether this Court should rule on the due process claims now or stay consideration of those claims. Nonetheless, because the *Carcaño* plaintiffs' motion for preliminary injunction on due process grounds remains pending before this Court, the Fourth Circuit lacks jurisdiction over plaintiffs' pending appeal, and the appeal should therefore be dismissed. Defendants have reiterated this position with the Fourth Circuit as recently as November 16, 2016.

(Signatures of counsel appear on the following page.)

Respectfully submitted, this the 21st day of November, 2016.

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83.1(d)

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CERTIFICATE OF SERVICE

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

This the 21st day of November, 2016.

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