

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

JOAQUÍN CARCAÑO, *et al.*,

Plaintiffs,

v.

ROY A. COOPER, III, *et al.*,

Defendants,

and

PHIL BERGER, *et al.*,

Intervenor-Defendants.

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

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' AND
EXECUTIVE BRANCH DEFENDANTS' JOINT MOTION
FOR ENTRY OF A CONSENT DECREE**

Defendants Roy A. Cooper III, Joshua H. Stein, Machel Sanders, Mandy K. Cohen, and James H. Trogdon III (collectively, “Executive Branch Defendants”) (Plaintiffs and Executive Branch Defendants will be collectively referred to herein as “the Parties”), respectfully submit the following memorandum of law in support of their joint motion for entry of a consent decree.

FACTUAL BACKGROUND

On March 28, 2016, Plaintiffs Joaquín Carcaño, Payton Grey McGarry, Angela Gilmore, American Civil Liberties Union of North Carolina, and Equality North Carolina

initiated this action. At that time, Plaintiffs challenged North Carolina House Bill 2 (“H.B. 2”), a statute requiring that multiple-occupancy bathrooms and changing facilities be used by persons based on their sex as stated on their birth certificate.

On March 30, 2017, H.B. 2 was repealed by North Carolina House Bill 142 (“H.B. 142”). In addition to repealing H.B. 2, H.B. 142 also limits authority to regulate access to multiple occupancy restrooms, showers, or changing facilities (“public facilities”) to the General Assembly.

On September 7, 2017, Plaintiffs filed a Fourth Amended Complaint, alleging that H.B. 142 violates the Due Process and Equal Protection Clauses of the United States Constitution.

Since Plaintiffs filed their Fourth Amended Complaint, the Parties have engaged in good-faith discussions to settle this dispute.

TERMS OF THE PROPOSED CONSENT DECREE

The proposed consent decree resolves this litigation as between the Plaintiffs and the Executive Branch Defendants. The proposed consent decree enjoins the Executive Branch Defendants from taking certain actions under H.B. 142 and current North Carolina law. *See* Consent Judgment and Decree at 5. The proposed consent decree also provides for dismissal of all of Plaintiff’s claims against the Executive Branch Defendants, and for each party to bear its own costs, fees, and expenses. *Id.* at 5-6.

ARGUMENT

I. The Proposed Consent Decree Is in the Public Interest and Is Fair, Adequate, and Reasonable.

The proposed consent decree is fair, adequate, reasonable, and in the public interest.

The proposed consent decree provides for Plaintiffs to dismiss their challenges to Sections 2, 3 and 4 of H.B. 142 against the Executive Branch Defendants, and to forego seeking damages, costs, expenses, and attorneys' fees, relating back to the beginning of this litigation. The proposed consent decree simply recognizes that any interpretation or application of H.B. 142 that barred transgender people from using public facilities in accordance with their gender identity would raise federal-law concerns, including concerns over constitutional guarantees of equal protection and due process, and that clarification of the proper scope of H.B. 142 is therefore necessary and appropriate.

This agreement represents a fair, adequate, and reasonable resolution to the constitutional claims raised by Plaintiffs. It will forestall further protracted litigation that would ensue in the absence of the consent decree, thereby conserving public resources, and will provide clarity regarding the Executive Branch Defendants' enforcement of existing North Carolina law. As a result, the citizens of North Carolina benefit from the entry of this consent decree.

CONCLUSION

For the reasons stated herein, the Parties respectfully request that the Court enter the proposed consent decree.

Dated: October 18, 2017

Respectfully submitted,

JOSHUA H. STEIN
ATTORNEY GENERAL
STATE OF NORTH CAROLINA

/s/ Amar Majmundar
Amar Majmundar
NC Bar No. 24668
SPECIAL DEPUTY ATTORNEY
GENERAL
NORTH CAROLINA DEPARTMENT OF
JUSTICE
Post Office Box 629
Raleigh, NC 27602
Telephone: (919) 716-6821
Facsimile: (919) 716-6759
amajmundar@ncdoj.gov

/s/ Olga E. Vysotskaya de Brito
Olga E. Vysotskaya de Brito
NC Bar No. 31846
SPECIAL DEPUTY ATTORNEY
GENERAL
NORTH CAROLINA DEPARTMENT
OF JUSTICE
Post Office Box 629
Raleigh, NC 27602
Telephone: (919) 716-0185
Facsimile: (919) 716-6759
ovysotskaya@ncdoj.gov

Counsel for Defendants GOV. ROY A. COOPER, III in his Official Capacity as Governor of North Carolina; JOSHUA H. STEIN, in his official capacity as Attorney General of North Carolina; MACHELLE SANDERS, in her official capacity as Secretary of the North Carolina Department of Administration; MANDY K. COHEN, in her official capacity as Secretary of the North Carolina Department of Health and Human Services; and JAMES H. TROGDON III, in his official capacity as Secretary of the North Carolina Department of Transportation.

CERTIFICATE OF SERVICE

I, Olga E. Vysotskaya de Brito, hereby certify that on October 18, 2017, I electronically filed the foregoing MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' AND EXECUTIVE BRANCH DEFENDANTS' JOINT MOTION FOR ENTRY OF A CONSENT DECREE, 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/Olga E. Vysotskaya de Brito
Olga E. Vysotskaya de Brito