

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.

1:16cv00236

ORDER

Before the court is the motion of Defendants Roy A. Cooper III, Joshua H. Stein, Machelles Sanders, Mandy K. Cohen, and James H. Trogdon, III (collectively, "Executive Branch Defendants"), seeking an extension of time to respond to the Fourth Amended Complaint pending this court's consideration of a proposed consent order as to the claims against them. (Doc. 219.) The University of North Carolina Defendants consent to the motion. (Id. ¶ 9.) The legislative Intervenor-Defendants oppose the motion on the grounds that this court lacks subject matter jurisdiction over the pending claims and Plaintiffs have failed to state claims under their constitutional and statutory theories. (Doc. 220 ¶ 1.) The

legislative Intervenor-Defendants and the University of North Carolina Defendants have moved to dismiss the Fourth Amended Complaint on those grounds. (Docs. 221, 222.) Those motions are in the briefing stage.

The legislative Intervenor-Defendants contend that this court should require the Executive Branch Defendants to file responsive pleadings because "[i]t would be inappropriate for the Court to consider entry of a consent decree *before* considering its own jurisdiction." (Doc. 220 ¶ 4.) However, the legislative Intervenor-Defendants fail to articulate any reason why the Executive Branch Defendants should not be relieved of its obligation to file a responsive pleading and to participate further in the litigation until its proposed consent decree is considered. Therefore, the court will grant the Executive Branch Defendants' pending motion to the extent that it relieves them of filing responsive pleadings. However, the court will defer consideration of the proposed consent decree until the various Defendants' pending challenges to the court's jurisdiction are resolved. Whether the Executive Branch Defendants choose to participate in the briefing on those challenges is up to them.

IT IS THEREFORE ORDERED that, absent further order of the court, the Executive Branch Defendants shall have thirty (30) days following the date of the court's disposition of the pending Joint

Motion for Entry of a Consent Decree (Doc. 216) in which to serve an answer or other responsive pleading to the Plaintiffs' Fourth Amended Complaint. The Executive Branch Defendants are not precluded from participating in the pending motions to dismiss (Docs. 221, 222), including the challenges to the court's jurisdiction.

/s/ Thomas D. Schroeder
United States District Judge

October 25, 2017