

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

JOAQUÍN CARCAÑO, *et al.*,
Plaintiffs,

v.

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

v.

PHIL BERGER, *et al.*,
Intervenor-Defendants

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

**INTERVENOR-DEFENDANTS'
UNOPPOSED MOTION TO EXTEND
DEADLINE TO RESPOND TO JOINT
MOTION FOR ENTRY OF A
CONSENT DECREE**

Pursuant to Local Rules 6.1(a), 7.1 and 7.3, Intervenor-Defendants Senator Phil Berger and Speaker Tim Moore (“Intervenors”) move to extend the time for responding to Plaintiffs’ and Executive Branch Defendants’ Joint Motion For Entry of a Consent Decree (Doc. 216), until thirty (30) days following this Court’s ruling on the pending motions to dismiss the Fourth Amended Complaint (Docs. 221, 222).¹ No party opposes this motion. In support of their motion, Intervenors would show as follows:

1. On September 7, 2017, Plaintiffs filed a Fourth Amended Complaint challenging Session Law 2017-4 (“HB 142”), a law enacted on March 30, 2017, to repeal Session Law 2016-3 (“HB 2”). Doc. 210.

2. On October 18, 2017, Plaintiffs and Executive Branch Defendants jointly moved for entry of a consent decree intended to effect “settlement of Plaintiffs’ claims against the Executive Branch Defendants.” Doc. 216, at 2. Under Local Rule 7.3(f), any response to that motion is due within 21 days, or by Wednesday, November 8, 2017.

¹ No separate brief is required for this extension request under Local Rule 7.3(j)(2).

3. On October 23, 2017, Intervenor and Defendants University of North Carolina and President Margaret Spellings (“UNC Defendants”) separately moved to dismiss the Fourth Amended Complaint under Federal Rule of Civil Procedure 12(b). Docs. 221, 222. Both motions challenge the Court’s subject-matter jurisdiction. Doc. 223, at 5-15; Doc. 225, at 3-11.

4. On October 25, 2017, the Court—in granting Executive Branch Defendants an extension of time to respond to the Fourth Amended Complaint—noted that the pending motions to dismiss challenge the Court’s subject-matter jurisdiction. Doc. 226, at 1-2. The Court also stated it “will defer consideration of the proposed consent decree until the various Defendants’ pending challenges to the court’s jurisdiction are resolved.” *Id.* at 2.

5. Consequently, Intervenor respectfully ask the Court to extend time for responding to the joint motion for entry of consent decree until thirty (30) days following the Court’s ruling on the pending motions to dismiss. Intervenor intend to file a response to the joint motion, but requiring a response in advance of the Court’s ruling on the motions to dismiss would be an inefficient use of the parties’ and the Court’s resources.

6. The Court’s ruling on whether it has subject-matter jurisdiction over the claims in the Fourth Amended Complaint may influence Intervenor’s response to the consent decree motion. *See, e.g., Local No. 93, Intern. Ass’n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 525 (1986) (explaining that “a consent decree must spring from and serve to resolve a dispute within the court’s subject-matter

jurisdiction”). If Intervenors must file a response by the current deadline (Wednesday, November 8, 2017), they will inevitably have to file supplemental pleadings to account for this Court’s eventual ruling on the jurisdictional issues raised by the motions to dismiss. The same will be true of any replies to be filed by the Plaintiffs and Executive Branch Defendants in support of the consent decree.

7. Intervenors respectfully submit that the better course would be to postpone any response to the consent decree motion until thirty (30) days after the Court has ruled on the pending motions to dismiss. Doing so would sharpen the issues on which the parties may disagree concerning the validity of the consent decree and also avoid the filing of unnecessary briefs that would burden the Court’s resources.

8. Undersigned counsel has conferred with counsel for Plaintiffs, Executive Branch Defendants, and UNC Defendants, and they do not oppose the extension requested in this motion.

Respectfully submitted,

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*appearing pursuant to Local Rule 83.1(d)

Counsel for Intervenor-Defendants

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 2nd day of November, 2017.

/s/ S. Kyle Duncan
Counsel for Intervenor-Defendants

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[PROPOSED] ORDER

Having considered the unopposed motion of Intervenor-Defendants Senator Phil Berger and Speaker Tim Moore, and for good cause shown, it is hereby ORDERED that the time for any party to respond to Plaintiffs' and Executive Branch Defendants' Joint Motion for Entry of a Consent Decree (Doc. 216) shall be extended until thirty (30) days following the date of this Court's disposition of the pending motions to dismiss Plaintiffs' Fourth Amended Complaint (Docs. 221, 222).

Dated: _____

The Honorable Thomas D. Schroeder
United States District Judge