

**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

**PLAINTIFFS' MOTION FOR LEAVE TO FILE DECLARATION OF ERICKA  
MYERS**

NOW COME Plaintiffs Joaquín Carcaño, Payton Grey McGarry, Hunter Schafer, Quinton Harper, Angela Gilmore, Madeline Goss, and American Civil Liberties Union of North Carolina (collectively, "Plaintiffs"), by and through their attorneys, and move the Court pursuant to Local Rule 7.1 for leave to file a supplemental declaration of Ericka Myers in support of Plaintiffs' standing, filed concurrently with this motion. In support thereof Plaintiffs state as follows:

1. On September 7, 2017, Plaintiffs filed their Fourth Amended Complaint, seeking declaratory and injunctive relief and nominal damages (D.E. 210), alleging that Plaintiffs are entitled to relief from this Court for violations of their rights under the Due

Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution, pursuant to 42 U.S.C. § 1983; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*; and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*

2. After substantial good faith negotiation, Plaintiffs and the Executive Branch Defendants reached a proposed settlement and jointly moved this Court for entry of a Consent Decree on October 18, 2017.

3. On October 23, 2017, UNC Defendants and Legislative Intervenors filed respective Motions to Dismiss the Fourth Amended Complaint. D.E. 221, 222. In part, the Motions to Dismiss challenged Plaintiffs' standing to bring claims challenging House Bill 142, codified as Session Law 2017-4 ("H.B. 142").

4. On December 1, 2017, Plaintiffs filed an Opposition to the Motions to Dismiss, arguing in part that Plaintiffs possess standing to challenge H.B. 142.

5. On December 15, 2017, UNC Defendants and Legislative Intervenors filed respective Replies in support of their Motions to Dismiss.

6. On January 25, 2018, Plaintiffs learned of additional facts further supporting their standing to challenge H.B. 142. Those facts are described in the attached Declaration of Ericka Myers.

7. In support of this motion, Plaintiffs submit a Memorandum of Law concerning the Court's ability to consider the Declaration of Ericka Myers in connection with its consideration of the pending Motions to Dismiss.

WHEREFORE, for the foregoing reasons, and for those set forth in Plaintiffs' supporting memoranda of law, Plaintiffs respectfully move the Court for leave to file the Declaration of Ericka Myers, filed concurrently with this motion.

\* \* \*

Dated: February 16, 2018

Respectfully submitted,

/s/ Christopher A. Brook

Christopher A. Brook (NC Bar No. 33838)

Irena Como\*

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\*Appearing by special appearance pursuant to L.R. 83.1(d)

*Counsel for Plaintiffs*

## CERTIFICATE OF SERVICE

I, Christopher A. Brook, hereby certify that on February 16, 2018, I electronically filed the foregoing PLAINTIFFS' MOTION FOR LEAVE TO FILE DECLARATION OF ERICKA MYERS, as well as Plaintiffs' Memorandum of Law in support and the attached declaration, 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/ Christopher A. Brook

*Counsel for Plaintiffs*