

**IN THE 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.

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

**JOINT MOTION FOR EXTENSION OF TIME TO MEET AND CONFER ON
CONSENT DECREE AND TO BRIEF NOMINAL DAMAGES CLAIMS**

NOW COME Plaintiffs Joaquín Carcaño, Payton Grey McGarry, Hunter Schafer, Quinton Harper, Angela Gilmore, Madeline Goss, and American Civil Liberties Union of North Carolina; Defendants Roy A. Cooper III, Joshua Stein, Machel Sanders, Mandy K. Cohen, and James H. Trogon III (“Executive Branch Defendants”); Defendants Margaret Spellings and the University of North Carolina (“UNC Defendants”); and Intervenor-Defendants Senator Phil Berger and Speaker Tim Moore (“Intervenor-Defendants”), by and through their attorneys, and move the Court pursuant to Local Rules 6.1(a) and 16.1 and Federal Rules of Civil Procedure 16 for an extension of time (1) to meet and confer regarding the Consent Decree in light of this Court’s September 30, 2018 Opinion and Order, and (2) to submit supplemental briefing on UNC

Defendants' and Intervenor-Defendants' pending motions to dismiss with respect to Plaintiffs' nominal damages claims. Good cause exists for granting the requested relief.

In support thereof the Parties state as follows:

1. On September 6, 2017, the Court granted Plaintiffs' Consent Motion for Leave to File Fourth Amended Complaint. As part of that order, the Court granted Defendants and Intervenor-Defendants an extension of time until 45 days from the date Plaintiffs' Fourth Amended Complaint is electronically filed to answer, move against, or otherwise respond to the Fourth Amended Complaint. (D.E. 209).

2. On September 7, 2017, Plaintiffs filed their Fourth Amended Complaint, seeking declaratory and injunctive relief and nominal damages. (D.E. 210).

3. Plaintiffs and Executive Branch Defendants filed a Joint Motion for Entry of a Consent Decree on October 18, 2017. (D.E. 216). If granted, the Consent Decree would resolve all of Plaintiffs' claims against Executive Branch Defendants. In light of the pending motion, Executive Branch Defendants sought an extension of time in which to serve an answer or otherwise respond to Plaintiffs' Fourth Amended Complaint. (D.E. 219).

4. On October 23, 2017, Intervenor-Defendants and UNC Defendants separately filed Motions to Dismiss the Fourth Amended Complaint under Federal Rule of Civil Procedure 12(b). (D.E. 221, 222).

5. On October 24, 2017, the Court granted Executive Branch Defendants' motion and provided Executive Branch Defendants thirty (30) days following the Court's resolution of the Motion for Entry of a Consent Decree in which to serve an answer or other responsive pleading to Plaintiffs' Fourth Amended Complaint. The Court also indicated that it would defer consideration of the proposed Consent Decree until UNC Defendants' and Intervenor-Defendants' pending challenges to the Court's jurisdiction were resolved. (D.E. 226).

6. On September 30, 2018, the Court issued a Memorandum Opinion and Order granting in part and denying in part Intervenor-Defendants' and UNC Defendants' motions to dismiss. (D.E. 248). With respect to Plaintiffs' "nominal damages claims for the period of time when HB2 was in effect against Plaintiffs," the Court found "[t]he briefing on these claims [to be] wholly inadequate for proper resolution." (D.E. 248 at 62). The Court directed that "[a]ny party wishing to submit additional briefing . . . must do so within 30 days of the issuance of this order." (D.E. 248 at 63). With respect to the joint motion for entry of a consent decree, the Court directed that "any party wishing to submit additional briefing . . . must do so within 30 days of the issuance of this order." In addition, the Court "direct[ed] all parties to meet and confer prior to the filing of such additional briefing to determine whether any agreement can be reached as to the effect of the court's rulings on the joint motion." (D.E. 248 at 63-64). The Court also reaffirmed that "Executive Branch Defendants are not required to serve an answer or other

responsive pleading to Plaintiffs' Fourth Amended Complaint until 30 days after the court's disposition of the joint motion for entry of a consent decree." (D.E. 248 at 64).

7. On October 11, 2018, the Court granted Intervenor-Defendants' and UNC Defendants' unopposed motion for extension of time to answer Plaintiffs' Fourth Amended Complaint. (D.E. 250.). The Court ordered that "Intervenor Defendants' time to answer is extended to 30 days after resolution (by Order of the court or announcement of the parties) of the pending motion for entry of a consent decree," and that "UNC Defendants' time to answer is extended to 30 days after resolution of the motion to dismiss Plaintiffs' nominal damages claims." (D.E. 250).

8. As to the pending motions to dismiss Plaintiffs' nominal damages claims, the Parties seek an extension in the 30-day briefing deadline and propose the following schedule: (1) UNC Defendants and Intervenor-Defendants file opening supplemental briefs on November 16, 2018, (2) Plaintiffs file an answering brief on November 30, 2018, and (3) UNC Defendants and Intervenor-Defendants file reply briefs on December 7, 2018.

9. With respect to the motion for entry of a consent decree, the Parties submit that in light of this Court's September 30, 2018 Memorandum Opinion and Order, they need more time to meet and confer on the pending motion. The Parties have already begun the meet and confer process, and Plaintiffs and Executive Branch Defendants are considering whether to propose amendments to the Consent Decree in light of the Court's

September 30, 2018 Memorandum Opinion and Order. The substance of those proposed amendments, if any, may determine the various Parties' positions on the Consent Decree. It is therefore of paramount importance that the Parties have sufficient time to conduct the meet and confer process. The Parties propose that they be given until November 30, 2018, to complete the ongoing meet and confer process, to allow Plaintiffs and Executive Branch Defendants to reach a decision as to whether any modifications to the pending consent decree should be submitted to the Court, and, if appropriate, to propose a briefing schedule on the Consent Decree to the Court.

10. Consistent with the foregoing proposed nominal damages briefing schedule and consent decree meet and confer deadline, the Parties also propose that Intervenor-Defendants and UNC Defendants should not be required to serve an answer or other responsive pleading to Plaintiffs' Fourth Amended Complaint until 30 days after the Court's disposition of both: (1) the motions to dismiss the Plaintiffs' claims for nominal damages and (2) the motion for entry of a Consent Decree.

11. No separate brief is required for this request pursuant to Local Rule 7.3(j)(2).

WHEREFORE, for the foregoing reasons, the Parties respectfully move that the Court enter an order extending the time for the Parties to meet and confer on the Consent Decree, to submit any additional briefing or a briefing schedule on the Consent Decree, and to fully brief the pending motions to dismiss Plaintiffs' nominal damages claims.

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*Appearing by special appearance
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CERTIFICATE OF SERVICE

I, Christopher A. Brook, hereby certify that on October 19, 2018, 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.

/s/ Christopher A. Brook

Counsel for Plaintiffs

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PROPOSED ORDER

On consideration of the Parties' Joint Motion for Extension of Time to Meet and Confer on Consent Decree and to Brief Nominal Damages Claims, and for good cause shown, IT IS ORDERED:

1. Regarding the Joint Motion for a Consent Decree, consistent with the Court's Memorandum Opinion and Order, the Parties are continuing to "meet and confer prior to the filing of [] additional briefing to determine whether any agreement can be reached as to the effect of the court's rulings on the joint motion." (D.E. 248 at 64). The Parties will continue to meet and confer until November 30, 2018, at which time they will submit a briefing schedule to the Court that takes account of the meet and confer and proposed amendments to the Consent Decree, if any.

2. Regarding Plaintiffs' nominal-damages claims, the UNC Defendants and Legislative Defendants shall file opening supplemental briefs in support of their Motions to Dismiss on November 16, 2018, Plaintiffs shall file an answering brief on November 30, 2018, and the UNC Defendants and Legislative Defendants shall file reply briefs on December 7, 2018.

3. The UNC Defendants and Legislative Defendants are not required to serve an answer or other responsive pleading to Plaintiffs' Fourth Amended Complaint until 30 days after the Court's disposition of both: (1) the UNC Defendants' and Legislative Defendants' Motions to Dismiss Plaintiffs' claims for nominal damages and (2) the Joint Motion for Entry of a Consent Decree.

4. As per the Magistrate Judge's order (D.E. 212), all outstanding discovery obligations remain stayed, and the parties shall conduct a supplemental Rule 26(f) conference within 21 days after the deadlines for the UNC Defendants, Legislative Defendants, and Executive Branch Defendants to answer.

Dated: _____, 2018

Thomas D. Schroeder, U.S. District Judge