

**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’  
NOTICE RE GRANTS  
OF CERTIORARI**

Intervenor-Defendants provide this Notice to draw the Court’s attention to the Supreme Court’s April 22, 2019 grant of certiorari in three cases: *Bostock v. Clayton County, Ga.*, No. 17-1618; *Altitude Express, Inc. v. Zarda*, No. 17-1623; and *R.G. & G.R. Harris Funeral Homes, Inc. v. E.E.O.C.*, No. 18-107. *Bostock* and *Zarda*, which have been consolidated, present the question whether discrimination on the basis of sexual orientation constitutes prohibited employment discrimination “because of . . . sex” within the meaning of Title VII. *R.G. & G.R. Harris Funeral Homes* presents the question “[w]hether Title VII prohibits discrimination against transgender people based on (1) their status as transgender or (2) sex stereotyping under *Price Waterhouse v. Hopkins*, 490 U. S. 228 (1989).” See Apr. 22, 2019 Order List at 2.

Plaintiffs in this case have claimed that HB 142 and HB 2 violate Title VII’s and Title IX’s prohibitions on “sex” discrimination. They argue that both prohibitions cover “discrimination on the basis of gender nonconformity, gender identity, transgender status,

and gender transition.” See 4th Am. Compl. at 98, ¶ 393; *id.* at 100, ¶ 401. This Court has dismissed Plaintiffs’ Title VII and Title IX claims as to HB 142 for lack of standing, but called for supplemental briefing on dismissal of Plaintiffs’ claims for nominal damages arising from the period when HB 2 was in effect. See Doc. 248 at 63. Intervenor-Defendants have explained why those claims are mooted by repeal of HB 2, and, in the alternative, fail on the merits. See Doc 254; Doc. 255. This Court will hear argument on dismissal of Plaintiffs’ remaining HB 2-related claims on May 17, 2019. See Doc. 281.

Further proceedings on the merits of Plaintiffs’ Title VII and Title IX claims will likely turn on the Supreme Court’s resolution of the questions presented in *Bostock, Zarda*, and *R.G. & G.R. Harris Funeral Homes*. Intervenor-Defendants submit that, should this Court consider Plaintiffs’ remaining Title VII and Title IX claims to present a live case or controversy, the Court should stay further proceedings specific to those claims until the Supreme Court provides further guidance. Because HB 2 is no longer in effect and Plaintiffs seek only nominal damages, no harm to Plaintiffs can result from postponing additional proceedings. All parties and this Court would be better served by foregoing the expense of litigation.

Respectfully submitted,

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\*appearing pursuant to Local Rule 83.1(d)

*Counsel for Intervenor-Defendants*

Date: April 23, 2019

## **CERTIFICATE OF SERVICE**

I hereby certify that on April 23, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record who have consented to electronic notification.

/s/ Stephen S. Schwartz  
Counsel for Intervenor-Defendants