

**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' RESPONSE TO INTERVENOR-DEFENDANTS'  
NOTICE CONCERNING GRANTS OF CERTIORARI**

Plaintiffs Joaquín Carcaño, Payton Grey McGarry, Hunter Schafer, Quinton Harper, Angela Gilmore, Madeline Goss, and American Civil Liberties Union of North Carolina (collectively, “Plaintiffs”), respectfully submit the following response to Intervenor-Defendants’ Notice drawing the Court’s attention to the Supreme Court’s April 22, 2019 grants of certiorari in *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. *See* ECF No. 282. As Intervenor-Defendants state in their Notice, *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. *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.

With respect to the nominal damages motion, Plaintiffs believe that determining whether their Title VII and Title IX claims present a live case or controversy is inextricably bound up with the merits of the claims. Accordingly, to the extent the Court intends to treat Intervenor-Defendants’ Notice as a motion, Plaintiffs do not object to holding the nominal damages motion in abeyance pending the Supreme Court’s decision in the referenced cases. With respect to the Consent Decree motion, the Court should proceed to adjudicate that motion because it is entirely independent of the issues to be decided by the Supreme Court in the cases referenced above. Plaintiffs have not asserted any Title VII or Title IX claims against the Executive Branch Defendants, and therefore the Consent Decree does not attempt to settle any such claims. Nothing would be gained by holding the Consent Decree motion in abeyance, and accordingly it should be heard and decided by this Court.

\* \* \*

Dated: April 24, 2019

Respectfully submitted,

/s/ Irena Como

Irena Como (NC Bar No. 51812)  
AMERICAN CIVIL LIBERTIES UNION OF  
NORTH CAROLINA LEGAL FOUNDATION  
Post Office Box 28004  
Raleigh, North Carolina 27611  
Telephone: 919-834-3466  
Facsimile: 866-511-1344  
icomo@acluofnc.org

James D. Esseks\*  
Leslie Cooper\*  
Elizabeth O. Gill\*  
Chase B. Strangio\*  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
125 Broad St., 18th Fl.  
New York, NY 10004  
Telephone: 212-549-2627  
Facsimile: 212-549-2650  
jesseks@aclu.org  
lcooper@aclu.org  
egill@aclunc.org  
cstrangio@aclu.org

Tara L. Borelli\*  
Peter C. Renn\*  
LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.  
730 Peachtree Street NE, Suite 1070  
Atlanta, GA 30308-1210  
Telephone: 404-897-1880  
Facsimile: 404-897-1884  
tborelli@lambdalegal.org  
prenn@lambdalegal.org

Devi M. Rao\*  
Andrew C. Noll\*  
JENNER & BLOCK LLP  
1099 New York Avenue, NW Suite 900  
Washington, DC 20001-4412  
Telephone: 202-639-6000  
Facsimile: 202-639-6066  
drao@jenner.com  
anoll@jenner.com

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

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I, Irena Como, hereby certify that on April 24, 2019, I electronically filed the foregoing PLAINTIFFS' RESPONSE TO INTERVENOR-DEFENDANTS' NOTICE CONCERNING GRANTS OF CERTIORARI 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/ Irena Como

*Counsel for Plaintiffs*