

**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
CONTINUE**

Pursuant to Local Rules 7.1–7.3, Intervenor-Defendants Senator Phil Berger and Speaker Tim Moore (“Intervenors”) move to continue the portion of the hearing now calendared for May 17, 2019 pertaining to the supplemental motions to dismiss Plaintiffs’ Title IX and Title VII claims.¹ Further consideration of those claims should be stayed pending Supreme Court resolution of three recently granted cases involving issues central to the Title IX and VII claims in this case. The affected parties have conferred, and Plaintiffs and the UNC Defendants represent that they do not oppose this motion. Intervenor request expedited consideration.

1. Plaintiffs in this case have claimed that HB 142 and HB 2 violate Title IX’s and Title VII’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

¹ The hearing itself should proceed, but limited as to the pending joint motion for entry of a consent decree. *See* Doc. 264.

Court has dismissed Plaintiffs' Title IX and Title VII 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. Intervenors and the UNC Defendants have filed supplemental briefs, *see* Docs. 254, 255, Plaintiffs have filed an opposition, *see* Doc. 258, and Intervenors and the UNC Defendants have filed replies, *see* Doc. 261, 262. (The Executive Branch Defendants, who are not party to those claims, did not file a brief.) This Court has calendared argument on dismissal of Plaintiffs' remaining HB 2-related claims, and for Plaintiffs' and the Executive Branch Defendants' joint motion for entry of a consent decree, for May 17, 2019. *See* Doc. 281.

2. On April 22, 2019, the Supreme Court granted certiorari in three cases bearing on Plaintiffs' Title IX and Title VII claims: *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.

3. Further proceedings on the merits of Plaintiffs' remaining Title IX 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*. Intervenors submit that further

proceedings connected to those claims should await additional guidance from the Supreme Court.

4. Because HB 2 is no longer in effect and Plaintiffs seek only nominal damages, no harm to Plaintiffs can result from postponing additional proceedings. The Executive Branch Defendants, who did not participate in the supplemental briefing and who are not party to Plaintiffs' Title IX and Title VII claims, would be unaffected. The other parties and this Court would be better served by foregoing the expense of litigation.

5. Accordingly, this Court should continue the portion of the hearing calendared for May 17, 2019 pertaining to the supplemental dismissal briefing. The Court should limit the hearing to the joint motion for entry of a consent decree. The Court should stay further proceedings specific to Plaintiffs' Title IX and Title VII claims until the Supreme Court resolves *Bostock, Zarda, and R.G. & G.R. Harris Funeral Homes*.

6. Intervenors request expedited consideration and resolution of this motion.

CONCLUSION

This Court should continue the hearing calendared for May 17, 2019 as it pertains to the supplemental dismissal briefing, and stay further proceedings related to Plaintiffs' remaining Title IX and Title VII claims until the Supreme Court resolves *Bostock, Zarda, and R.G. & G.R. Harris Funeral Homes*.

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 3d day of May, 2019.

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

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[PROPOSED] ORDER

The unopposed motion of Intervenor-Defendants Senator Phil Berger and Speaker Tim Moore to continue the May 17, 2019 hearing as it pertains to Plaintiffs' Title IX and Title VII claims is GRANTED. The May 17, 2019 hearing will be limited to the pending joint motion for entry of a consent decree. Further proceedings related to Plaintiffs' Title IX and Title VII claims are STAYED pending the Supreme Court's resolution of *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.

DATE: _____

United States District Judge