

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

MAXWELL KADEL, *et al.*,

Plaintiffs,

v.

DALE FOLWELL, in his official capacity as
State Treasurer of North Carolina, *et al.*,

Defendants.

Case No. 1:19-cv-00272-LCB-LPA

**PLAINTIFFS' UNOPPOSED MOTION FOR LEAVE TO FILE COMBINED,
OVERLENGTH DISPOSITIVE BRIEFS**

Pursuant to Federal Rule of Civil Procedure 7(b)(1) and Local Civil Rule 7.3, and for the reasons discussed below, Plaintiffs, through undersigned counsel, respectfully move for leave to file combined, overlength dispositive briefs.

In support of this Motion, Plaintiffs state that:

1. Plaintiffs filed their initial Complaint on March 11, 2019, ECF No. 1, and their Amended Complaint on March 9, 2021, ECF No. 75.

2. In their Amended Complaint, Plaintiffs assert a variety of claims under federal laws against multiple and distinct Defendants. Specifically, the Amended Complaint asserts claims against Defendant North Carolina State Health Plan for Teachers and State Employees (“NCSHP”) under Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*

(“Title VII”); Defendants Dale Folwell and Dee Jones, in their official capacities, under 42 U.S.C. § 1983; and Defendant Department of Public Safety (“DPS”) under Title VII.¹

3. On September 23, 2021, the U.S. Court of Appeals for the Fourth Circuit issued its mandate affirming the Court’s decision that Defendant NCSHP could be sued under Section 1557 of the Affordable Care Act, ECF No. 118.

4. Discovery concluded on September 30, 2021, with the exception of two expert depositions that extended into October 2021. *See* ECF No. 98; September 28, 2021 and October 8, 2021 Text Orders.

5. The discovery has encompassed the review of hundreds of thousands of document pages and twenty depositions.

6. On October 12 and 13, 2021, Plaintiffs, Defendants Folwell, Jones, and NCSHP, and Defendant DPS all filed notices of intent to file dispositive motions. ECF Nos. 123-125.

7. The dispositive motions are due on November 30, 2021. *See* October 6, 2021 Text Order.

A single combined opening brief, and similarly, combined response and reply briefs, would ease the presentation of issues, avoid duplicative briefing, and promote efficiency and the conservation of resources. For example, Plaintiffs anticipate that being able to

¹ Plaintiffs also asserted claims against former Defendants University of North Carolina at Chapel Hill, University of North Carolina at Greensboro, and North Carolina State University (together, “University Defendants”). On August 14, 2021, upon the Joint Motion of Plaintiffs and the University Defendants, the Court dismissed those claims, ECF No. 112.

present a single, unified statement of undisputed facts in one brief will save the unnecessary duplication that would be required if Plaintiffs were to file multiple briefs against the various Defendants. Similarly, there will be common legal issues—such as why the exclusion of coverage for transgender employees and dependents constitutes sex discrimination—that could be presented once in a combined brief instead of repetitively across several briefs.

In addition, good cause exists to enlarge the word limitations for Plaintiffs’ proposed combined briefs. Local Civil Rule 56.1(c) adopts the limitations on lengths of briefs set forth in Local Civil Rule 7.3(d)(1), which states that “briefs prepared on a computer in support of motions and responsive briefs shall not exceed 6,250 words and reply briefs shall not exceed 3,125 words,” including “the body of the brief, headings and footnotes.” Given the various claims and theories at play in this case under three distinct federal laws, as well as the sheer number of parties (eight plaintiffs and four defendants) and the voluminous record in this case, an enlargement of the word limitation for Plaintiffs’ proposed combined briefs is warranted.

Plaintiffs request that they be allowed to file combined opening, response, and reply briefs with the following word limits:

- a. Combined opening brief: 14,000 words
- b. Combined response brief: 14,000 words
- c. Combined reply brief: 7,000 words

The requested word limitation for the combined opening and response briefs is only 1,750 additional words more than the sum of the words Plaintiffs would be allowed should they file two separate briefs. This increase is necessary due to the multiplicity of claims and parties, and the breadth of the record. The same holds true for the 750 additional words for Plaintiffs' combined reply brief.

Counsel for Plaintiffs consulted with counsel for all defendants. Defendant DPS consents to this motion. Defendants Folwell, Dale, and NCSHP "take no position regarding the Plaintiffs' request."

For these reasons, Plaintiffs respectfully move for leave to file combined opening, response, and reply dispositive briefs, limited to 14,000 words, 14,000 words, and 7,000 words, respectively.

Dated: November 5, 2021

Respectfully submitted,

/s/ Amy E. Richardson

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Counsel for Plaintiffs

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system which will send notification of such filing to all registered users.

Dated: November 5, 2021

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ORDER

Upon consideration of the Plaintiffs' Unopposed Motion for Leave to File Combined Overlength Dispositive Briefs, it is hereby

ORDERED that the motion is **GRANTED**. Plaintiffs may file combined opening, response, and reply dispositive briefs, limited to 14,000 words, 14,000 words, and 7,000 words, respectively.

This, the ____ day of November, 2021.

U.S. District Court Judge for the
Middle District of North Carolina